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PROVINCIAL POLICIES RELEVANT TO THE REVIEW OF OFFICIAL PLANS

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AN ANALYSIS OF

PROVINCIAL POLICIES RELEVANT TO

THE REVIEW OF

OFFICIAL PLANS

THE REGIONAL MUNICIPALITY
OF WATERLOO

DEPARTMENT OF PLANNING
AND DEVELOPMENT

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This study examines the history, content and interpretation of "Policies" prepared at the Provincial level which impact the development and review of municipal Official Plans. As far as is known, this is the first serious attempt to pull together into one document these various Provincial Policies, Guidelines or Position Papers for reference by municipalities in evolving their own policies or understanding provincial perspectives. Without the help, interest and co-operation of many staff persons from several provincial ministries, this task could not have been accomplished. Any errors, omissions or mis-interpretations which might be found in this report are in no way the responsibility of those who gave so unstintingly of their time and advice.

As Provincial Ministries move increasingly to ensure that their administrative mandates are recognized and translated into municipal planning policies, there is a parallel obligation on municipalities to be aware of the implication of these emerging areas of interest on their respective jurisdictions. The Regional Municipality of Waterloo is pleased to have pioneered this effort.

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SUMMARY

Provincial Ministries have used the municipal official plan process as a vehicle to implement their corporate objectives for over two decades. By setting out "policy requirements" for local authorities to address in the development, amendment or review of their official plans, several Ministries have been able to protect and better achieve their corporate interests by securing the municipal planning system as an implementation vehicle. In many cases municipal co-operation in these endeavours has been voluntary and enthusiastic. In others it has been extremely difficult and acrimonious. Many issues inherent to provincial policy addressed in this report are well known to municipal planners and decision-makers as a result.

The 1983 Planning Act did not set out to change this long-standing relationship so much as to recognize its existence. Much of the pressure for this initiative came from municipalities who demanded clearer "ground rules" in provincial policy matters. In the near future this aspect of the new Act will express itself in a very direct way with the release of a series of "policy statements" authorized under Section 3 on such well known subjects as foodland preservation, floodplain control, mineral aggregate resource planning and the like. As these subjects receive yet another round of public attention municipal Councils will again be faced with questions specific to each subject and with such general concerns as:

- How are these policy statements to be interpreted?
- What do they indicate about the future direction of "provincial policy"?
- How do they relate to "other" policy requirements pursued by various Ministries in the Official Plan process?
- Where are local planning policies likely to experience conflict or confusion with provincial policy interests?
- Where do municipalities stand in dealing with a wide array of policy "requirements" eminating from various Ministries.

This report has been developed to discuss precisely these issues. Originally the report was intended to serve only as a background study input to the review of the Regional Official Policies Plan (R.O.P.P.). However, as the research progressed and scheduling demands in the R.O.P.P. Review overtook the analysis, the focus of the report was broadened to address the subject of provincial "policy" in a more comprehensive way. Hopefully, the final output will assist the reader to understand not only specific "provincial policy" issues but also the origins, emerging trends and implications of these initiatives.

The practitioner should be cautioned, that this report only deals with provincial policies deemed relevant to official plans. There are many other "policies" such as the Ministry of Transportation and Communication's Highway Access/Corridor Control policies that are highly relevant to other areas of municipal planning practice (i.e., consent administration, zoning, etc.) that are not dealt with by this report.

Due to the broad scope and resulting length of this report different readers may not have the inclination to challenge the entire document. To assist those with a modest objective Chapter 1 is recommended for general orientation purposes followed by the report's conclusions outlined by Chapter 4. Those interested in a discussion of the origins and implications of provincial policies in general will find Chapter 2 worthwhile. Readers interested in the background, basic components and implications of specific provincial policy items may tackle Chapter 3 in whole or in part.

As indicated repeatedly by the discussion to follow the issues inherent to policy are frequently ambiguous, contradictory and extremely difficult to categorize in a precise manner. They reflect, in other words, the realities of a complex decision-making environment at both the provincial and municipal levels. For this reason extra care has been taken by this report to define and address key points. Nevertheless, the report reflects the author's conceptions of policy and the policy "system". Ultimately, the objective of the report is not to provide totally comprehensive analysis so much as to provoke individual thought and general discussion on a matter of emerging importance to the day to day practice of planning in this Province.

CHAPTER 1

INTRODUCTION

Purpose of this Report

The Ontario Planning Act, 1983 continues to place the official plan in a role of directing all municipal planning and capital works programs. The Act now recognizes the involvement of Provincial Ministries in that role through Section 3 of the legislation. The "rules of the game" in official plan matters have thereby changed to a certain extent. These "new" rules place a statutory onus upon municipal Councils to recognize, understand and show that due "regard" for at least some of the policy interests of various Ministries in the development, review or amendment of official plans.

The purpose of this report is to assess what these new "rules" really mean for the development and review of municipal official plans. It identifies the nature of policy interests being pursued by various Ministries and attempts to sort out the varying status of those interests. It tries to assess, at least in general terms, the significance of Ministry policies to the review and updating of the 1976 Regional Official Policies Plan.

Ministry Interests and Official Plans

In the course of reviewing official plans for final approval the Ministry of Municipal Affairs (and its predecessors or delegates) circulates these documents to various Provincial Ministries for review and input. The objective of the circulation has been to identify any difficulties which the proposed municipal policies may pose to the "interests" of such agencies. From a practical standpoint at least concensus support from these provincial agencies has long been a pre-requisite to final ministerial approval of any official plan or amendment.

Over the last 30 years of this circulation process there has been a slow evolution in the involvement of various Ministries. Originally this involvement was merely one of reacting to individual proposals which could be interpreted as contrary to Ministry interests. It has now evolved toward the promotion of positions on what official plans should or should not address and how they should address matters of interest to some Ministries. Similarly the nature of these positions have changed from simply ensuring municipal planning actions do not infringe upon Ministerial interests, toward ensuring that municipal planning actions reinforce or even implement those interests on the Ministry's behalf and under the Ministry's supervision. This evolution is by no means complete or comprehensive.

Initially the objective of Ministries engaged in the municipal plans review process was to avoid additional "expense" in financial, administrative and political terms of implementing their mandates where municipal planning policy would compete with, pre-empt or undermine those interests (i.e., preventing development within a potential nature preserve before it can be acquired). However, as the fiscal restraints of the 1970's and 80's have limited the ability of Ministries to pursue their mandates through direct expenditures and services it has been necessary to seek out new opportunities to implement or expand those mandates. The municipal planning process provides such an opportunity to a number of Ministries. By promoting policies that obtain municipal acknow'edgement and commitment to implement Ministry interests (i.e., protecting the candidate nature preserve as an alternative to its acquisition) some of the pressure of fiscal restraint on Ministry objectives is relieved.

Ministerial interests in municipal official plans have thereby become more specific and proactive in their approach. As the scope of municipal planning activity has broadened, official plans have become more detailed. While Ministerial "policy" requirements on official plans are not the only reason for the greater complexity of plan documents, they certainly have proven a contributing factor.

How Ministry Interests are Applied

In general terms Ministry "policies" are promoted for inclusion in municipal plans at three stages:

- the preliminary drafting stage prior to adoption by Council
- the post-circulation, modification stage prior to final approval by the Minister (or his delegate), or
- as a result of referral (appeal) decisions to the Ontario Municipal Board (and potentially Cabinet).

At each stage the flexibility of a Ministry to promote or demand municipal policy adherence to its interests is narrowed. The need for those interests to be expressed by official plan policy must be defined and justified to the individual case in a more rigorous manner. Similarly, each stage presents municipal Councils with less input and control over the precise terms by which a Provincial policy interest is addressed in local planning procedures. The practical constraints and uncertainties imposed on both municipal and Ministry interests through the Ministerial modification and the Ontario Municipal Board appeal procedures results in a situation where it is in the interest of both Ministries and municipalities to clearly define their respective interests in an official plan and reach some compromise on any disagreements prior to the adoption of the Official Plan by Council if at all possible. The process of developing municipal Official Plans and reconciling the policies and interests of provincial Ministries in these documents is one of "negotiation". The form and affect of the "negotiation" varies enormously since it depends upon the interests and activities of the participants, the "stage" at which "negotiation" occurs, the differences and flexibility behind opening positions, the willingness to compromise, and so forth.

As a result, Ministry "policies" are not uniformly applied. They are subject to considerable interpretation and refinement at different stages in the process. The degree to which municipal plan "conformity" is achieved depends upon:

- the status of the policy or position within the Ministry or the Provincial administration as a whole,
- the relevance of the policy to local conditions (i.e., is it an important or insignificant issue),
- the nature and performance of pre-existing official plan provisions relevant to the policy (i.e., have policies developed for the purposes of farmland preservation also worked well to implement other interests such as forest land management),
- the municipality's position on the subject and its actions in negotiations which seek to reconcile competing interests,
- other policy interests which the sponsoring Ministry considers more important to secure at any point in time.

Ministries are usually congnizant that their policy interests frequently overlap with those of other Ministries and the municipality itself. These overlaps invariably demand some measure of compromise which the participants can regard to be acceptable. A Ministry may thereby "concede" on the strict application of one of its policy mandates or on the application of a particular policy to a particular area for the sake of securing a "more important" policy interest on another subject or in another area of the municipality.

Thus any municipal official plan represents a compromise of some form between various Ministerial and municipal interests. Final approval of the official plan by the Minister or his delegate is generally seen to "bind" the parties to this compromise. The compromise thereafter becomes difficult to change or erode by any party without opening up the entire matter for re-negotiation. New Ministry policies, revisions to existing policies or changes in the interpretation of a policy are seldom applied "retroactively".

It should be emphasized that Section 6 of the Planning Act only requires Provincial Ministries to "have regard to" municipal official plan policies. Hence, the continuing commitment of Provincial agencies to the "compromise" provisions of an approved Official Plan is a matter of widely respected administrative practice rather than legislative requirement. Only when a municipal action will offend new, revised or reinterpreted policy in some very significant way will a Ministry act to enforce this new interest outside of a previous official plan compromise. This usually occurs through an appeal to the Ontario Municipal Board.

The new Planning Act has modified the "rules of the game" to the extent that it requires municipalities "to review" their official plan policies at least once every five years. The Ministry of Municipal Affairs is careful to point out that Section 26 of the Planning Act only requires a municipal Council to "review" its Official Plan to the extent of determining the "need" for revisions. Other Ministries generally interpret the review process as a statutory opportunity to ensure official plan policies address new or reformulated provincial policy. Section 23 of the Planning Act would reinforce this by its authorization for the Minister of Municipal Affairs to request a Municipal Council to amend their Official Plan on a policy statement issue or to impose the amendment by Ministerial order if the Council refuses. Whatever is the final "official" interpretation on this issue, it is obvious that the compromise policies established through previous official plan approvals must be opened up for potential re-negotiation during or at some point following the Section 26 "review" procedure. Past policy compromises may well become more difficult to sustain.

Conclusion

The discussion to this point could be interpreted to suggest municipalities are unwilling participants in the process of applying Ministry policies concerning provincial interests through their official plans. In some cases this is undoubtedly true. However, in many other cases municipal objectives are identical or similar to those of a Ministry. Matters of provincial interest can frequently be judged to be matters of regional or local interest. They may reflect similar "good planning" objectives; different in scope or approach perhaps, but similar none-the-less.

The point of this paper is that whether a matter of Provincial "policy" is seen in a positive or negative light, municipal understanding of the basis and scope of the policy is essential in dealing with the matter. There is nothing new in this. What is new is that the Planning Act now establishes procedures for municipalities to contend with Provincial policy positions more frequently and with greater affect than in the past. It has set into motion a new or more explicit approach to the development and application of policies within a number of Ministries.

In this sense circumstances have changed to a very significant degree. Ministries will likely have a great deal more difficulty in any future attempts to apply "informal", "undocumented" and "ambiguous" policy requirements in municipal plan review than they have had in the past. Similarly municipalities are no longer able to ignore Provincial policy interests and the evolution of those interests toward "policy statement" status as recognized in the new legislation.

CHAPTER 2

PROVINCIAL POLICY INVOLVEMENT IN LOCAL PLANNING

History of Ministry Policy Involvement

The interest of Provincial Ministries in the power and procedures of local planning has emerged slowly over the last few decades as a result of their involvement in the municipal plan review and approval process of the Planning Act. In the earlier years this interest was entirely REACTIVE whereby negative or neutral comments on proposed official plans or amendments were given depending on the perceived impacts of their provisions on the Ministry's program objectives. However, as Ministry objectives expanded in the 1960's and the fiscal resources to achieve them began to shrink in the 1970's the inter-relationships between Provincial interests and municipal planning actions took on greater importance for many Ministries.

Several Ministries began to develop a PROACTIVE approach to their municipal plan input function beginning in the mid 1960's that would press for recognition or compliance with their "policy". At the time much of the "policy" promoted by various Ministries was undocumented, of very uncertain status outside of the sponsoring Ministry or branch and ill defined in terms of the municipal response expected. Frequently what one Ministry regarded as "policy" was nothing more than the historical approach or "traditions" followed by the branch in making decisions on a given subject. Early attempts by Provincial agencies to demand adherence to such "policy" generated an enormous amount of confusion as conceptions of what was the appropriate response in different municipal official plans and their related implementation instruments were not always compatible. Thus, the dilemmas and conflicts inherent to municipal dealings with Provincial "policies" are by no means a recent concern.

In the first Report of the Ontario Law Reform Commission of 1967, the pervasive uncertainty and confusion surrounding "policy" requirements being applied by Provincial agencies in local affairs was highlighted. A recommendation was tendered for such policy interests to be made explicit by formal Provincial-level "plans". A similar conclusion was made by the Ontario Select Committee Report on the Ontario Municipal Board in 1972. This recommended that clearer direction be afforded the Board and other affected agencies on the policies of various Ministries relevant to local planning activities. In 1973 the Ontario Economic Council Report, Subject to Approval, combined these recommendations with a call for both explicit Provincial "plans" and the production of circulars and procedural manuals on Provincial "policy" and legislative interpretation.

In the late 1960's and early 1970's the main Provincial response to the need for co-ordination in "policy" requirements in local planning was to focus on the preparation of provincial "plans" for broad geographic areas or strategic features under the Design for Development program. However, this exercise in provincial planning ultimately failed to achieve the inter-Ministerial and political concensus necessary to produce final plan documents in all but a few cases.* The organizational structure for provincial level plans in almost all other contexts was therefore disbanded in the mid 1970's.

*Parkway Belt West Plan, Niagara Escarpment Plan.

The issue of confused and ambiguous Provincial policy was again raised in 1977 by the Planning Act Review Committee (P.A.R.C.). At the time some progress was underway within the Ministries of Agriculture and Food and Natural Resources to develop more coherent, topical policy outlines. However, most Provincial policy interests remained as obscure as ever to municipalities and the general public. The P.A.R.C. Report dealt extensively with this issue; concluding that municipalities had valid concerns for the chaotic range of so-called "policies" and the apparent incoherence of Provincial policy interests in their affairs.

As an alternative, the P.A.R.C. Report recommended that the entire matter be handled in a formal way. It recommended that Provincial interests be outlined in legislation and thereafter articulated only through statutory orders, policy statements and other official directives formally adopted by the Legislature, Cabinet or Ministers designated by Cabinet. It suggested that "Provincial policy" be approved and presented to municipalities in a systematic, coherent fashion which leaves no room for doubt as to its status as the formal position of the entire Provincial government.

The Provincial Government's White Paper response to the P.A.R.C. Report acknowledged the need for a more "disciplined" policy affecting local planning. However, the White Paper stopped short of a commitment to the formal system articulated by P.A.R.C. The response proposed included an outline of provincial interests in legislation, the use of "statutory orders" on procedural matters, the preparation of "policy circulars" on matters of "major" provincial policy affecting municipalities and the distribution of planning "guidelines" providing technical information and advice. A Cabinet approval and distribution procedure was supported for "statutory orders" and "policy circulars".

The White Paper did not clearly address the status and nature of "guidelines" nor did it imply any commitment to the articulation of Provincial interests only by way of "policy circulars". It did not acknowledge the existance or role of policy developed by various Ministries independent of the "policy circular" process nor define a formal process for their consideration in planning matters.

The response outlined by the White Paper on the Planning Act was translated more or less directly into Sections 2, 3 and 69 of the revised legislation. The term "policy circular" became "policy statement" and the role of the Minister of Municipal Affairs was clarified.

Following approval of the legislation in 1983, the Ministry of Municipal Affairs produced a draft information "guideline" setting out requirements on the proper form, content and procedures for Cabinet approval of policy statements under Section 3 of the new Act. While this "guideline" has received extensive circulation within the Provincial administration, it has yet to be released to the public. In addition to setting out an editorial and procedural approach for such policy statements, this guideline indicates Municipal Affairs' position that "policies" from other Ministries would not be recommended to Cabinet for policy statement status unless they could be proven by the sponsoring Ministry to be tested so as to ensure requirements on municipalities were workable. It was suggested that a "guideline" was the appropriate vehicle for this interim "testing" phase.

At the time of writing a number of candidate policy statements are in existence ready to be released for public comment as required by Section 3 of the Act, or, are in the final stages of revision for presentation to Cabinet*. In addition, a number of other matters of policy interest in local planning are under development within their sponsoring Ministries as "guidelines".

It is apparent that for the foreseeable future the policy statement process will not be effective to embrace, regularize and clarify all policy requirements being applied by various Ministries. Rather, it will only be effective for "major" issues which have a long history of provincial-municipal experience such as floodplains, agricultural lands, etc.

Overview of Legislation Pertaining to Ministry Policy

The Planning Act has been revised to legitimize "Provincial Policy" intervention in municipal planning and to establish a more "disciplined" approach to its administration as requested by municipalities and recommended by the P.A.R.C. Report. In this section significant attributes and implications of the legislation are reviewed.

- Provincial Interests -

Section 2 of the Planning Act, 1983 provides an outline of the general scope of the "provincial interest" in municipal planning as follows:

2. The Minister, in carrying out his responsibilities under this Act, will have regard to, among other matters, matters of provincial interest such as,

   (a) the protection of the natural environment, including the agricultural resource base of the Province, and the management of natural resources;

   (b) the protection of features of significant natural, architectural, historical or archaeological interest;

   (c) the supply, efficient use and conservation of energy;

   (d) the provision of major communication, servicing and transportation facilities;

   (e) the equitable distribution of educational, health and other social facilities;

   (f) the co-ordination of planning activities of municipalities and other public bodies;

   (g) the resolution of planning conflicts involving municipalities and other public bodies;

*Immediately prior to the final revision of this study the draft Foodland Preservation policy statement was released to replace the Foodland Guidelines reviewed herein. This report does not address this recent draft policy statement.

(h) the health and safety of the population; and

(i) the protection of the financial and economic well-being of the Province and its municipalities.

Two characteristics of this section are significant to provincial interests and policies associated therewith. First, the interpretation of "provincial interest" is vested exclusively with the Minister of Municipal Affairs. Where interpretations of the "provincial interest" differ between Provincial Ministries, Section 2 of the Act makes it clear that the interpretation of the Ministry of Municipal Affairs will prevail if the powers inherent to Section 2 are to be utilized.

This implication in Section 2 places a greatly increased onus upon other Ministries to clearly identify and to legitimize their interpretation of provincial interest. It has spurred a number of Ministries to document or update explicit policy directives for their staff engaged in plan review functions, and, in some cases for municipal information as well.

From a municipal perspective this appears to be a very positive trend. It promises to reduce the number of arbitrary, undocumented, quasi-official "policies" that have been applied by several Ministries in the past.

Second, the listing of provincial interests in Section 2 is neither all-inclusive nor specific as to its scope or the extent of the interest versus regional, county or municipal interests on the same subject. The Minister of Municipal Affairs may interpret "provincial interest" to exist on other matters not specifically listed in Section 2, such as toxic waste disposal. Further, the Minister may interpret provincial interest to have either a broad application, such as the maintenance of mineral aggregate supplies to a large market area, or a very narrow application, such as an individual gravel pit proposal in a particular location. Not only does the Minister of Municipal Affairs' interpretation of provincial interest prevail over other Ministries, it prevails over all municipalities and agencies in activities prescribed under the Act.

On the basis of his interpretation of "provincial interest" the Minister of Municipal Affairs is granted wide powers of intervention in local planning affairs. As indicated by Section 3 of the Act he may independently or jointly recommend provincial policy statements on matters of provincial interest for Cabinet approval. He may waive approval requirements for municipal Official Plan Amendments that do not adversely affect the provincial interest under Section 21(2). He may demand that a municipality amend its planning controls to reflect a matter of provincial interest covered by a policy statement under Section 23 or may institute the amendment himself if the council refuses to act. He may advise the Ontario Municipal Board that any matter subject to appeal or referral under Sections 17(19), 22(5), 23(1), 34(28) and 46(15) of the Act may adversely affect a provincial interest* and thereby render the Board's decision in the matter not to be final or binding until confirmed, varied or rescinded by Cabinet.

*An amendment to the Planning Act, now being considered by the Ministry of Municipal Affairs, would remove the restriction on the Ministry's provincial interest mandate only to cases where an "adverse effect" is likely. The amended Act will permit the declaration of provincial interest in both negative and positive contexts.

It should be emphasized, however, that any Ministry may still undertake actions such as appeals, the preparation of "policy" documents or the promotion of certain planning practices without having the matter formally declared by the Minister of Municipal Affairs as a "provincial interest." Thus, while the Act may appear to grant a great deal of power to the Minister of Municipal Affairs over other Ministries, there is still ample opportunity for them to act independently. Indeed Municipal Affairs staff have tended to view Section 2 as more of a "preamble" to other, more substantive sections of the Act than a powerful vehicle for exercising discretionary authority over other agencies.

- Policy Statements -

Section 3 of the Act authorizes the preparation, circulation and adoption of policy statements on matters of provincial interest which all actors in the municipal planning system must thereafter consider and implement as appropriate. Section 3 provides a general outline of how this is to be accomplished.

3. (1) The Minister, or the Minister together with any other minister of the Crown, may from time to time issue policy statements that have been approved by the Lieutenant Governor in Council on matters relating to municipal planning that in the opinion of the Minister are of provincial interest.

(2) Before issuing a policy statement, the Minister shall confer with such municipal, provincial, federal or other officials and bodies or persons as the Minister considers have an interest in the proposed statement.

(3) Where a policy statement is issued under sub-section (1), the Minister shall cause it to be published in The Ontario Gazette and he shall give or cause to be given such further notice thereof, in such manner as he considers appropriate, to all members of the Assembly, to all municipalities and to such other agencies, organizations or persons as he considers have an interest in the statement.

(4) Each municipality that receives notice of a policy statement under sub-section (3) shall in turn give notice of the statement to each local board of the municipality that it considers has an interest in the statement.

(5) In exercising any authority that affects any planning matter, the council of every municipality, every local board, every minister of the Crown and every ministry, board, commission or agency of the government, including the Municipal Board and Ontario Hydro, shall have regard to policy statements issued under sub-section (1).

The provisions of Section 3 have four main implications for the operation of the provincial "policy" system and the municipal response to its requirements.

First, in the interpretation of "provincial interest" relevent to a policy statement the Ministry of Municipal Affairs has exclusive control. Control arises from the fact that Section 3(1) demands the participation of the Minister of Municipal Affairs in any policy statement matter. This power extends from the determination of what matters go before Cabinet for policy statement status to the format, content and administrative procedures associated with any policy statement.

The approval procedures of the Planning Act have long made municipalities subject to such Ministerial discretion. This feature offers no great change from their perspective. However, for other Ministries the influence of the Ministry of Municipal Affairs over policy affairs that have traditionally been their exclusive or primary preserve is indeed a significant departure from the past.

Various Ministries are charged with the jurisdiction or legislative duty to implement legislation, policies, and programs within their mandate independently or with "higher priority" than other Ministries whose primary jurisdiction lies elsewhere. Section 3 of the Planning Act offers distinct advantages for a Ministry to achieve its mandated role through municipal planning procedures by having its policy accorded "policy statement" status. However, to achieve such status that Ministry must effectively give up exclusive control over the content of the policy and its administrative procedures to the Ministry of Municipal Affairs conceptions of what is or is not appropriate. The other Ministry must thereby consider whether the apparent benefits in status derived from Section 3 of the Act outweigh a potential loss of control over the nature and approach to its policy. Where the other Ministry's policy interest in local planning affairs is inherently discretionary, ambiguous as to the local response required or extremely technical in nature, there may be distinct advantages to continuing with an "independent" policy and not pursuing policy statement status.

The second implication of Section 3 is that the policy statement must relate to a matter of "provincial interest" which can be coherently articulated and justified as relevant to local planning practice. In this respect there is a heavy onus on the authors of a policy statement to clarify the meaning and scope of the provincial interest so as to indicate the manner in which it may affect municipal planning. As evidenced by the confusion and controversy associated with some past initiatives, such as the Floodplain Criteria, this task is both fundamental and extra-ordinarily difficult in certain subjects. It requires an intimate awareness of the variations in approach and procedure to a given subject taken by both provincial agencies and municipalities so as to outline meaningful and coherent requirements for implementation.

This condition has, in turn, spawned an initial approach in the drafting of some policy statements of establishing only very generalized directives in the policy statement document and supplementing these by a detailed implementation "guideline" which articulates such general directives in different policy and procedural contexts. The apparent benefit of this approach is to introduce "flexibility" into the policy statement so as to permit its articulation and refinement in a variety of ways. The difficulty (as evidenced by the draft Mineral Aggregate Resource Planning Policy) is that some standards or requirements which are fundamental to the interpretation or municipal administration of the policy statement are expressed in the implementing "guideline." The Act imposes no obligation or onus upon municipalities and other local planning agencies to adhere to "guidelines"; only policy statements.

The third feature of this Section concerns provisions for consultation and notice. As outlined by sub-sections 2, 3 and 4 at least one round of extensive consultation must be followed for policy statements before their ratification by Cabinet and a final notification circulation after ratification. This is essential given the significance for a policy statement to affect any planning actions upon its final approval. However, with any public notification procedure comes the prospect for significant delays between the initiation of the procedure and its ultimate conclusion. In terms of Section 3, delays of one year or more are likely at the very least. This potential for extensive delay suggests that once a policy statement is declared on a given subject it cannot be subject to frequent revision thereafter. For this practical reason Ministries cannot put anything but tried and tested policy requirements into the policy statement process without running the risk of generating extensive confusion and controversy.

The fourth and perhaps most significant feature of Section 3 is its requirement for all local planning authorities to "have regard to" approved policy statements. An extensive debate on the meaning and significance of the phrase "have regard" to was waged during the public discussion on the draft Planning Act. To many this debate was inconclusive in that it did not resolve a specific, universally applicable interpretation.

The Act places a clear onus upon local planning authorities to show they have "regarded" the provisions of the policy statement. The standards of judgement as to what is appropriate justification in this regard ultimately rest with the sponsoring Ministry, the Ministry of Municipal Affairs, the Ontario Municipal Board and Cabinet, not the municipal Council. Hence, the continuing debate over the effective meaning of the phrase "have regard to" is absolutely critical for determining the impact of the policy statement process in municipal planning affairs.

The Ministry of Municipal Affairs has consistently argued for a interpretation that provides a fairly liberal scope to municipal Council discretion. The Ministry essentially sees the phrase to require municipal Councils to address policy statement matters to the extent Council deems reasonable considering local social, economic and physical conditions. Only where significant deviations or conflicts exist between the municipal position and policy statement contents would a justification for such discrepancies be required. In the course of interviewing staff from other Ministries for this report it became evident that a very different interpretation of "have regard to" is developing elsewhere in the Provincial administration. Almost without exception staff of other Ministries indicated an interpretation of the phrase to mean "shall comply with." In this context a narrow scope to municipal Council discretion is anticipated and the expectation for justification on deviations to the policy statement are much more rigorous. All clearly intend to challenge to the Ontario Municipal Board (and perhaps Cabinet) any municipal attempt to deal with policy statements in an arbitrary or cursory manner.

While the Ontario Municipal Board has not yet ruled on a matter relating to a policy statement approved pursuant to Section 3, it has a long history of interpretive decisions on the meaning of the phrase "have regard to". This phrase appears in the consent evaluation procedures specified by Section 50(4) of the current Planning Act and equivalent sections in preceding versions of the legislation. In this context, the Board has consistently interpreted "have regard to" to mean "in compliance with" unless there are ambiguities in the applicable policies that preclude its coherent application to a given case or compelling practical circumstances to the individual case that merit an approval or refusal.

Some would also suggest that the Board's previous decisions on matters regarding "Provincial Policy" has indicated a trend toward the "strict" interpretation of such policy. While it is obviously premature to interpret the Board's intentions in the matter of policy statements, one might expect that at least in the early years, a "liberal" interpretation of "have regard to" is unlikely, regardless of intentions of the Ministry of Municipal Affairs given the position of other Ministries and the ever-present potential for the declaration of a provincial interest in appeals.

This raises two major concerns for content of policy statements. As previously indicated the emerging form of some policy statements appears to outline only the general nature of the provincial interest and broad principles for its articulation. Much of the essential detail is left to an implementing "guideline" which has no statutory validity. Given an interpretation that apparent "deviations" in policy application may occur when circumstances warrant or the policy is ambiguous in the applicable case, this policy statement format may well breed erratic implementation despite the "compliance" expectations of some sponsoring Ministries.

Secondly, given that the onus of proof rests with municipalities, it is imperative that the standards of conformity, (or, more specifically, the matters to be addressed by municipalities in justifying "regard to") be made explicit in the policy statement itself. Without standards or criteria as to the acceptable approach and nature of a justification to prove due "regard", how are municipalities to rely on their justifications? How are they to know if their justifications are to be judged by sponsoring ministries as complete or appropriate? How are they to be assured that the treatment they receive from the interpreting Ministries is consistent with the treatment being given others or that it will be generally consistent through time? Clearly, it is the justification to prove "due regard" which holds the greatest prospect for long-term confusion and controversy in policy statement matters. Given differences of interpretation on the meaning and impact of the term between Ministries and municipalities, the justification issue becomes critical for the immediate future.

A outline of justification requirements, as currently made by Section 3.14 of the Foodland Guidelines,* seems to be essential. Even if the justification requirements are made explicit in the implementing "guideline", the fact that such documents have no coherent status provides little reassurance. In the absence of such statutory recognition, no one involved in the process is obligated to follow or to even consider the content of a "guideline." Erratic interpretations of what is or is not "appropriate" justification may legitimately occur. Municipalities can legitimately be run through inconsistent justification procedures as a result. Similarly the process of justification itself becomes subject to negotiation and ambiguity of interpretation. The pitfalls inherent to this kind of circumstance can only be avoided if the justification procedures for proving "regard" form a part of the policy statement itself.

*and carried forward by the recent draft Foodland Preservation policy statement.

- Delegation of Ministerial Authority -

The delegation of the authority of the Minister of Municipal Affairs to grant final approvals or exercise supervisory powers, has been a major feature of the new Planning Act. This delegation of authority is framed by Section 4.

4. 1) The Minister, on the request of the council of any municipality may, by order, delegate to the council any of the Minister's authority under this Act other than the authority to approve the official plan or amendments thereto of the municipality of which it is the council, under section 50 of the Condominium Act, under subsection 298(11) and subsection 306(2) of the Municipal Act, under subsection 82(3) of the Registry Act and under section 145 of the Land Titles Act and where the Minister has delegated any such authority, the council has, in lieu of the Minister, all the powers and rights of the Minister in respect thereof and the council shall be responsible for all matters pertaining thereto, including, without limiting the generality of the foregoing, the referral of any matter of the Municipal Board.

2) The Minister, on the request of the planning board of any planning area in a territorial district, may, by order, delegate to the planning board any of the Minister's authority under this Act, other than the authority to approve official plans and amendments thereto, and where the Minister has delegated any such authority the planning board has, in lieu of the Minister, all the powers and rights of the Minister in respect thereof and the planning board shall be responsible for all matters pertaining thereto, including, without limiting the generality of the foregoing, the referral of any matter to the Municipal Board.

3) A delegation made by the Minister under subsection (1) or (2) may be subject to such conditions as the Minister may by order provide.

4) The Minister may by order, accompanied by a written explanation therefor, withdraw any delegation made under subsection (1) or (2) and, without limiting the generality of the foregoing, such withdrawal may be either in respect of one or more applications for approval specified in the order or in respect of any or all applications for approval made subsequent to the withdrawal of the delegation, and immediately following any such withdrawal the council or the planning board, as the case may be, shall forward to the Minister all papers, plans, documents and other material in the possession of the municipal corporation or the planning board that relate to any matter in respect of which the authority was withdrawn and of which a final disposition was not made by the council or the planning board prior to such withdrawal.

Sub-section 1 provides a wide potential scope to the delegation of Ministerial power. The extent of any delegation to responsible municipalities is defined in each case by the Minister's Order enacted under sub-section 3. The Order not only defines the scope of delegated powers but sets out terms and procedures under which delegated functions must be exercised. Supervisory control is maintained by the continued involvement of the Ministry of Municipal Affairs in the circulation process that precedes all final approvals, a regular monitoring process and the potential enforcement of Ministerial interests through the "call-in" provisions of Sub-section (4).

Since delegation takes place at the sole discretion of the Minister of Municipal Affairs it occurs to the extent and under the conditions the Minister may establish in each case through the Minister's Order and other "letters of understanding" with the delegated Council. The transfer of authority from the Minister is never without reservation or conditions beyond the call in powers of Section 4. In the case of the Region of Waterloo's delegation, the authority of the Minister to interpret or declare "provincial interest" in any matter is retained notwithstanding a very broad delegation and a longstanding exercise of delegated powers since 1976. This delegation is "enforced" by letters of understanding with Council and Regional staff to "consider" the policies and interests of Provincial agencies and to asceed to any "provincial interest" declaration that might be exercised by the Minister.

All this places the delegated "upper tier" authority in a somewhat ambiguous and potentially contradictory position with respect to its own Official Plan and those of the "lower tier" municipalities. Both Section 27 of the Planning Act and several of the Acts establishing Regional governments demand "lower tier" conformity "with upper tier" plans. Yet delegation is granted with the "understanding" or requirement that the delegated council effectively apply Provincial policies and interests. Where the upper tier plan is clearly in conflict with any Provincial interest requirements, a delegated Council could be placed in the rather difficult position of choosing between the two, although its ultimate allegiance must rest with its own Official Plan due to Sections 24 and 27 of the Planning Act.

This implies that notwithstanding the emergence and evolution of provincial interests and policies, the Official Plan of the delegated upper tier authority is still the final arbiter of competing interests between Area Municipalities and Provincial policies. As difficult and unpalatable as it may be, the call-in provisions of Sub-section 4 would have to be used by the Minister of Municipal Affairs to reconcile a provincial interest which clearly is in conflict with the upper tier Official Plan. Similarly to avoid this condition there is a much greater onus placed upon the "review" or amendment process of the delegated authority's Official Plan to address "incompatibilities" with Provincial policies and interests.

- Other Policies and Guidelines -

The Planning Act addresses only matters of provincial interest declared by the Minister of Municipal Affairs and policy statements approved by Cabinet pursuant to Section 3 as being effective in municipal Official Plan matters. The legislation does not explicitly acknowledge "other policies and guidelines" of the Provincial administration referenced in the preceeding discussion.

Some people interpret the Planning Act's silence on these 'other policies and guidelines' as an implied authorization for municipal Councils to ignore them entirely. Clearly they have a "lesser" status under the Planning Act if only because they cannot be enforced in the same manner as a declared provincial interest or policy statement under Sections 2 and 3. However, they can hardly be ignored.

The Planning Act may be the pre-eminent legislation respecting municipal planning activity, but it enjoys no superior status to a variety of other statutes directly administered by various Ministries. This "other legislation" frequently provides explicit or implied authority for these Ministries to continue to develop and pursue "other policies and guidelines" in a variety of contexts, including municipal planning (i.e., the Environmental Protection Act or the Environmental Assessment Act). Since the Planning Act does not prohibit or control these continued "policy" activities within the Provincial administration, the "discipline" in Provincial "policy" demands upon municipal Official Plans that was to be established by the new Planning Act has not yet emerged in practice. When all the foreseeable policy statements are ratified under Section 3 of the Planning Act, it appears that municipalities will <u>still</u> be faced with <u>five</u> types of "other policies and guidelines."

First there will be the "guidelines" that interpret and implement approved policy statements and which operate in conjunction with those statements. As discussed previously, the current format of some policy statements is such as to address additional policy or significant interpretative issue through the companion "guidelines" which is approved by the Minister of Municipal Affairs and the co-sponsoring Minister, but not Cabinet as a whole. Presumably these "guidelines" will be seen by many to have an impact akin to the policy statement itself.

Second there will continue to exist formal, Cabinet-approved "Provincial Policies" requiring some measure of implementation through municipal Official Plans that are <u>not</u> approved pursuant to Section 3 of the Act. The widely held assumption that Section 3 of the Planning Act would be the <u>only</u> vehicle for the imposition of Cabinet-approved policies in Municipal Official Plans is evidently false according to recent interpretations from some Provincial Staff.

Third there will exist a number of policy "guidelines" developed by various Ministries, which are intended to become policy statements when the Ministry of Municipal Affairs can be convinced it is warranted. There are very powerful incentives for sponsoring Ministries to demand "compliance" to these "policy-statements-in-waiting". Without proof of a successful and broad-based record of municipal administration, the Ministry of Municipal Affairs will not recommend them to Cabinet. This class of "guidelines" will therefore carry the <u>same</u> expectation of "compliance" or "regard" as a policy statement insofaras the sponsoring Ministry is concerned.

The fourth variant of "guideline" relates to the continuing existance of Ministry policy expectations and requirements in local planning affairs on subjects which have no long-term intent or ability to become policy statements. The ambiguous status of this class of "policy "in relation to other Provincial positions will continue to confuse municipal dealings with the plan review process. These policies or positions will have the status and authority deemed relevant by the sponsoring Ministry. As indicated in the next Chapter there is little or no inter-Ministerial consistency in this class of policy.

Finally, there is a fifth class of "guidelines" such as those developed by the Ministry of Municipal Affairs. These usually have no "policy" status but are merely intended as helpful information references for discretionary municipal application.**

Conclusion

The foregoing suggests that despite new legislative directives on the matter municipal planning authorities must continue to deal with basic issues of what constitutes "policy" in the Ontario Government and what status or impact is carried by pronouncements of the Provincial administration in order to judge when and how to address these in local planning programs. The inherent ambiguities and confusion can only be alleviated by a more systematic, coherent system of policy development at the Provincial level. Significant progress has been made to this end, without question. However, it is evident that the revised legislation will only produce a coherent, predictible approach to a few Provincial requirements on policy statement issues.

The ambiguities and differences of opinion highlighted in this Chapter on policy statement issues are likely to persist in the next few years. This is to be expected of any new policy procedure. In that sense the degree of concern applied to policy statements evident at this time is likely to seem out of proportion to their practical impact in the longer term. Early difficulties should not be interpreted to defeat the entire process.

Perhaps the more significant, longer term issue concerns the continuing application of other Provincial or Ministry "policies" applied to local Official Plans outside of Section 3. Little will have been gained by municipalities if these "other" policies persist in having a confused, ill-defined status, inconsistent content and no meaningful prospect for municipal input to their development and revision. The issue for municipalities may not be how to avoid the impact of the policy statement procedure, but how to make it work effectively such that it becomes the only mechanism for the application of provincial policy on all matters affecting official plans. It is the only formal procedure that acknowledges and legitimizes the right of municipalities to be consulted in the development and to receive notification of the approval "policy" at the Provincial level.

**For example: Guidelines for Recreational Vehicle Campgrounds, Ministry of Municipal Affairs and Housing, 1981.

CHAPTER 3

SORTING OUT PROVINCIAL POLICY

Part I - Differing Conceptions of "Policy".

It should surprise no one that Provincial Ministries just as municipalities, agencies and individuals conceive and apply "policy" in many different ways. Each takes a slightly different approach to the subject that reflects what "makes sense" in their particular situation. As a result, conceptions on the form, content and interpretive affect of "policy" range over a series of continuae.

To some, policy may have no precise "form" and may appear in a letter, an internal memorandum, a speech made by a superior or perhaps an undocumented "position" of some executive authority whose existence and meaning are derived solely from experience. To others, policy is a rigorously defined directive contained in a formal document clearly accorded "official" status only by the highest applicable authority. Similarly, the content of a policy may be conceived to range from a very broad outline of desirable principles or objectives to be used as guidance in setting what are really arbitrary requirements to individual cases; to a very specific action directive that identifies the precise conditions of its intended application. Further, the practical effect of a policy directive can vary in impact depending upon whom in the organizational hierarchy is responsible for its implementation. Junior administrative personnel are seldom delegated interpretive authority which results in the closely circumscribed definition and application of policy requirements. Senior executives, on the other hand, are normally endowed with great interpretive authority which may even include the power not to exact the requirements of a policy in an otherwise applicable circumstance. All these parameters of form, content and effect may change from subject to subject, organization to organization and from time to time.

This apparent chaos in the meaning of "policy" is normally "contained" by the day-to-day working environment of the organization. That is to say the form, content and interpretive effect of policies are a product of the particular organizations and executives they serve and are thereby expressed in ways which "make sense" to those organizations and individuals. Policies are established and updated or new employees indoctrinated on the subtleties of the "policy" system by what management science calls the "corporate culture" of an organization. So long as a policy works within the particular "culture" of its sponsoring organization, it serves many useful functions. Its most significant benefits are to implement goals and define organizational interests in a consistent manner and to permit the delegation of decision-making authority to its "appropriate" level of application.

This Report deals with Ministry policies affecting municipal Official Plans which reflect the differing conceptions of "policy" of their sources. There is no discernible "commonality" to these conceptions of "policy" between Ministries; even to the extent of having consistent system for recording them for reference purposes! These are policies which call for a response by municipalities that may be outside their normal environment or "corporate culture". The result can be a good deal of confusion when policy conceptions of different organizations working in different contexts must be brought together to be reconcilled and applied. The differences of form, approach and effect between such policies are highlighted resulting in uncertainty of interpretation for the respective corporate "outsiders". The process of resolving these relative ambiguities can be a confusing and hazardous exercise, particularly when policies have different levels of "status" (i.e., legislative or political authority). Nevertheless, this is the task which municipal Official Plans have increasingly been called upon to accomplish over the last decade.

To the sponsoring agency wishing to have its "policy" interests reflected in local plans, its policy directives on those interests appear clear and usually carry subtle differences in meaning or status that are seldom revealed in public. To corporate outsiders the true meaning and power of such policies is not as certain. The outsider seldom hears about and may not comprehend subtle differences in policy status and cannot always take the "words" of a policy or the sponsoring agency's claims of status at face value. To determine the true aims of a policy or assess its true legitimacy within the Provincial administration as a whole, one must look beyond the surface qualities of various directives to consider their history and operational characteristics.

What is Policy?

A general review of policy science literature was conducted preparatory to this report. While the academic community also lacks a universal conception of "policy" in all its derivatives, its literature provides a great deal more conceptual organization on the subject than has yet emerged in practice. In this context the following definition of policy was found to have pursuasive merit.*. It is, therefore, used in this Report as a starting point for categorizing provincial "policies."

> **POLICY is a documented, officially sanctioned and publically declared statement which identifies for those affected, the action(s) which the organization intends to take in response to predefined conditions which can reasonably be expected to occur more than once or a restricted number of times.**

*See D.H. Kerr, "The Logic of Policies and Successful Policies", Policy Science, Vol. 7, No. 3, pp 351-363.

- Policies -

The salient characteristics of this definition as applied to the Provincial "policy" reviewed by this Report include all of the following:

a) the policy must appear in some document which is reasonably accessible or has been distributed to municipalities and other interests such that it has been recognized or generally known to have "official" status;

b) the policy must have been approved for implementation by a senior authority (such as the Legislature or Cabinet) which can be regarded to be legitimate and authoritative by both Provincial staff and affected municipalities. In a practical sense there must be no question as to the legislative or political legitimacy of this policy approval;

c) the policy must be publicly declared or announced to affected parties before or at the time it is originally put into affect; and

d) the policy must identify meaningful actions or requirements that are to be applied in response to defined conditions likely to occur with reasonable frequency rather than be merely a series of discretionary statements or an outline of general principles designed to achieve desirable ends.

Against this somewhat rigorous definition very few Provincial or Ministry "policies" relevant to municipal Official Plans, emerge as true POLICY. Those which meet the criteria of POLICY are:*

1. Foodland Guidelines
2. Flood Plain Criteria
3. Mineral Aggregate Resource Planning Policy
4. Land Use Policy Near Airports
5. New Residential Development Adjacent to Freeways

- Positions -

At the other end of the spectrum exist various edicts, pronouncements and "requirements" applied by some Provincial agencies in the review and approval of Official Plans which meet virtually none of the standards of POLICY used in this report. These pronouncements are generally undocumented or are documented only for internal staff purposes. They may have been endorsed or espoused by some authority which Ministry staff are obliged to regard as legitimate (i.e., a Program Director or Deputy Minister) but are largely unknown or not regarded to be authoritative by most "outsiders" to the Ministry. Rarely are these pronouncements made known to affected municipalities until specific Official Plan or zoning actions are proposed that are deemed to "offend" the pronouncement. In a number of cases the precise nature of the municipal response required by the policy is not coherently defined but left to Ministry staff articulation in the individual case.

*The Toronto Centred Region Plan, the Parkway Belt West Plan and the Niagara Escarpment Plan also comply with the definition of POLICY used herein. These will not be reviewed partly due to their location-specific nature and partly because they gain authority not from the Planning Act and policy procedures derived thereunder, but from the Planning and Development Act, the Parkway Belt Planning and Development Act and the Niagara Escarpment Planning and Development Act which authorize comprehensive provincial plan documents.

Despite their apparently tenuous status these POSITIONS are nevertheless applied by Ministry staff frequently with the same degree of fervour as other POLICY. The "better known" POSITIONS of various Ministries applying to Official Plan content* could be identified as:

- Ministry of Citizenship and Culture
  - Heritage Planning Guidelines
- Ministry of the Environment
  - Noise and New Residential Development
  - Air Pollution Compatability
  - Sewage Treatment Facilities and Sensitive Land Uses
- Ministry of Municipal Affairs
  - Secondary Plan Policy
  - Peripheral Mall Development
  - Policy Content of Official Plans
    - Extra-jurisdictional Policy
    - Social and Economic Policy
    - Community Improvement Policy
    - Site Plan Control Policy
    - Parkland Dedication based on Density
    - Policy for Cottage Areas
    - Private Road Development
    - Bonus Zoning
- Ministry of Natural Resources**
  - Fisheries Policy
  - Resource Policy Content for Official Plans
    - Forest Resources
    - Mineral Resources
    - Wildlife Resources
    - Wild Rice Resources
    - Areas of Natural and Scientific Interest
    - Provincial Parks
    - Hazard Lands

*This Report deals only with "policies" which have a reasonably direct relationship to Official Plan policy. There are other "policy" requirements applied by Ministries in the municipal planning process that have no such direct relationship to Official Plans.

** All Ministry of Natural Resources "policies" are outlined by the "Plan Input and Review Handbook". The titles given herein are an adaption in some cases.

- Ministry of Transportation and Communications

  - Guidelines for the Review of Official Plans.

- Pseudo-Policies -

Finally, there exists a range of policies whose status is neither as ambiguous nor obscure as a POSITION but which do not possess all the attributes of a POLICY. These pronouncements usually benefit from Ministerial or Cabinet endorsement and have normally been the subject of extensive distribution or release to affected municipalities and others. However, they contain qualifications which clearly indicate they are not to be regarded as Provincial POLICY or which leave discretion in ultimate application to municipalities themselves.

There appears to be a growing convention to refer to this third class of policy as "Guidelines." Indeed, this title is currently being promoted by the Ministry of Municipal Affairs. However, at this juncture the term "Guideline" is used in such a chaotic way as to be virtually incoherent. In order to avoid complicating this situation, the term PSEUDO - POLICY* will be used in this Report to describe this third class of directives which include:

1) Wetland Guidelines
2) Agricultural Code of Practice
3) Group Home Policy Guidelines

Part II - Review of Provincial "Policies"

The discussion which follows will trace the historical development and authority associated with each POLICY, PSEUDO-POLICY and POSITION advocated by various Ministries. This is followed by a summarized "overview" of the major components of the "policy" as it applies to municipal official plans. A concluding sub-section provides a cursory appraisal of the relevance of the "policy" to the Regional Official Policies Plan (1976) and highlights major issues to be addressed in the formulation of revised policy through the Regional Official Policies Plan Review process.

*The term PSEUDO-POLICY is not used in this Report with any negative connotation. The term is accepted in policy science literature in reference to any "policy" whose ultimate application is not to be applied with certainty.

POLICIES

FOODLAND GUIDELINES*

Background

The Foodland Guidelines POLICY has been a relatively effective initiative for the Province in the municipal planning system. This success may be the result of several factors including: a clear, well developed information base through the Canada Land Inventory and Agricultural Code of Practice, an approach focused on an understandable methodology for agricultural land planning rather than inflexible policy standards; a policy that did not place retro-active restraints upon established areas of urban development or development commitment, compatability between the requirements of the policy and simple planning and control systems available at the municipal level to carry it out; and, fairly widespread public and political support for its principal objectives.

The Foodland Guidelines originated in the concluding phases of the Province's "Design for Development" regional planning process. The basic objectives of the policy were articulated for public review in a short POSITION paper entitled "A Strategy for Ontario Farmland" jointly tabled in the Legislature in April 1976 by the Ministries of Agriculture and Food and Treasury, Economics and Inter-governmental Affairs. Following the demise of the regional planning function of Treasury later in 1976, the Ministry of Agriculture and Food sustained the initiative through a draft "policy" document entitled "Green Paper on Planning for Agriculture: Foodland Guidelines in February of 1977.

Following public distribution and comment on the Green Paper, Cabinet endorsed and released the final "white" paper POLICY document known since as the Foodland Guidelines in November of 1978.

In 1983, with the release of the Ministry of Natural Resources' Mineral Aggregate Resource Planning Policy, the Foodland Guidelines POLICY was formally revised by Cabinet to clarify the relationship between the two policy statements.

The Foodland Guidelines POLICY is now in the process of reformulation preparatory to its release as a draft "policy statement". Following another round of public consultation, it will be re-submitted for Cabinet endorsement pursuant to Section 3 of the Planning Act.*

Overview

The Foodland Guidelines has five major elements of concern to municipal Official Plan policy:

1. That a separate designation be established for the agricultural area based on a general analysis of Canada Land Inventory Class 1-4 agricultural capability soils, existing urban and rural settlement areas, specially crop and other viable farm uses existing in the rural area on lesser quality soils.

*The Foodland Preservation Policy Statement was released for public comment immediately prior to the final draft of this Report.

2. That within this designation official plan policies give clear priority for long-term agricultural uses wherein only farming, forestry, conservation, sand and gravel , utilities and farm-related uses are permitted. Existing rural hamlets may also be permitted without a separate designation, provided that their growth is restricted to "minor" infilling and expansion for farm and rural-related purposes.

3. That an explicit land severance and non-farm development policy be established covering:

   a) creation of new farms to be evaluated on the basis of:

      - agricultural soil capability;
      - flexibility to make future production changes in response to market demands;
      - suitability of the operation to the type of farms and farm services in the area;
      - viability of the farm to produce and sustain economic returns to the operator.

   b) creation of farm-related lots for the purposes of technical severances, the sale of surplus farm dwellings, retiring farmers and farm help accommodation, and farm-related service facilities to be evaluated on the basis of:

      - their relationship to the needs of the farm;
      - their ability to be suitably located in hamlets or elsewhere outside of the agricultural designation;
      - compliance with the Agricultural Code of Practice;
      - their suitability for installation of private water and sewage disposal services.

   c) development of non-farm uses and farm uses on existing lots within the rural area in compliance with the Agricultural Code of Practice.

4. That all urban and other uses not permitted within the agricultural designation be designated separately with definitive staging policies identified for predefined intervals so as to maintain a regular, concentric advancement of development toward the urban boundary.

5. That any proposed urban expansion or non-farm use designation in the "agricultural" designation be justified on the basis of an analysis that considers:

   - projected population and employment
   - land absorption rates and projections
   - growth allocation policies in senior Government policies
   - existing land inventories, infilling development capacities
   - the density of the proposed development in relation to needs
   - the need for over-designation beyond trend requirements to allow for market competition
   - efficient servicing considerations
   - special uses requiring special locational characteristics

- evaluation of alternative locations for the proposal based on agricultural capability and the availability of land for development

and demonstrates that the impact upon prime agricultural soils and established farm operations is minimized.

Regional Official Policies Plan Review Issues

Since 1976, the Regional Official Policies Plan (R.O.P.P.) has maintained a specific designation of Agricultural Resource Policy Areas through Map No. 2 that is based on soil capability factors. Agricultural pursuits are accorded "priority" in these areas but the nature of this priority is not clearly defined. These policies permit limited recreational, institutional, commercial and industrial uses to be established and to expand in agricultural areas without a separate designation contrary to the requirements of the Foodland Guidelines. Non-farm residential development is also permitted contrary to the Guidelines but under such restrictive requirements that the opportunities for such lot creations have all but ceased outside of designated settlements in the Area Municipal Official Plans. The severance of lots for farm-related and retirement purposes has not been permitted since 1980.

Land severance policies for the creation of new farms use a large minimum farm size (35 hectares) criterion that is supplemented in the Township Official Plans by comment requirements from the Ministry of Agriculture and Food on farm viability issues. Compliance with the Agricultural Code of Practice in the creation of new farms and non-farm uses has been required from the inception of the Regional Plan.

The R.O.P.P. requires specific designation of urban and non-farm residential development areas through the Settlement Policy Area provisions. Specific staging of development requirements are established for the cities, but these have been ineffective in practice at achieving predictable, concentric development due to variable market demand and servicing constraints. Regional Official Policies Plan policies governing justification for the creation or expansion of settlements and other rural non-farm uses is not explicitly related to those established in the Foodland Guidelines.

The Regional Official Policies Plan can therefore be judged as in substantial conformity with the Foodland Guidelines; however, several areas of deviation must be addressed in the revised document.

FLOODPLAIN CRITERIA POLICY

Background

The Floodplain Criteria POLICY has undoubtedly had the longest and most controversial periods of gestation of any provincial initiative affecting municipal Official Plans.

The POLICY evolved from a Ministry of Natural Resources POSITION known as "Environmental Protection Areas Policy" promoted in the 1972-74 period for inclusion in Municipal Official Plans. The POSITION, later known as the "Hazard Lands Policy", dealt with restrictions on development in floodplains as well as other areas of physographic hazard to development such as unstable slopes and soils. While the floodplain elements of the original statement have been elevated toward POLICY status under the Planning Act, the remaining elements on natural hazards continue in their POSITION status within the Ministry of Natural Resources.

In 1975 Ministerial "endorsement" of the floodplain elements of the original Hazard Land policy by the Ministers of Housing and Natural Resources resulted in the first requirement that floodplain policies be incorporated in municipal official plans. Problems in the implementation of floodplain policy were recognized shortly thereafter, leading to the formation of a Floodplain Task Force in 1976 and the production of the Dillon/McLaren Study "Floodplain Management Criteria and Management Evaluation Study that reviewed technical issues. This report was followed in 1977 by a public discussion document "Discussion Paper on Floodplain Management Alternatives" which in turn lead to a concluding report in 1978 entitled: "Floodplain Management Policies in Ontario: Task Force Report." Also in 1978 the floodplain policy initiative received a significant and controversial boost in status with the signing of the Canada-Ontario Flood Reduction Agreement. This Agreement had the effect of restricting almost all forms of Federal funding in areas defined under the Agreement as having a flood risk without specific supportive Official Plan policies, while providing additional funding for engineered flood mapping.

The policy elements recommended in the final Task Force Report of 1978 were subsequently ratified by Cabinet as the Floodplain Criteria in 1979. However, the contentious implementation issues were sent through another round of internal inter-Ministry review between 1979 and 1981 to develop specific procedures. It was not until these implementation guidelines were completed in 1982 that the Floodplain Criteria POLICY was officially released for public information.

In the period between 1975 and 1982 it should be noted that the floodplain policy was being applied by Ministry of Natural Resources and Ministry of Municipal Affairs for inclusion in municipal official plans despite the fact it was under extensive review and redevelopment. The uncertain status and variable interpretations of the policy during this period generated considerable confusion on the part of both municipal and provincial staff which led to variable application and enforcement. This in turn, fueled the controversy surrounding the policy.

Shortly after the Floodplain Criteria POLICY was released in 1983, controversy surrounding the matter prompted the formation of an independent review of the entire POLICY by the Floodplain Review Committee. This Committee held extensive hearings in late 1983 throughout the Province on the entire floodplain issue. Its Report in 1984 recommended fundamental and sweeping changes in the POLICY and its administration to effectively transfer control in the matter to municipal Councils. This Report was in turn subject to public comment which generally rejected its proposals for radical change.

In October 1984 the Minister of Natural Resources issued a "Statement" responding to the Flood Plain Review Committee Report. This "Statement" outlined a "revision" of the Cabinet-approved Floodplain Criteria POLICY by the Minister. It indicated that reductions from the Regional Storm flood standard would be permitted to a 100 Year Storm flood standard in those watersheds where a majority of municipalities endorsed a reduction following local public meetings on the matter. Unlike an earlier revision to the Foodland Guideline POLICY, the "revision" to the Floodplain Criteria POLICY made in the October 1984 statement did not carry the explicit endorsement of Cabinet as a whole. It is not clear what authority the Minister of Natural Resources has to "unilaterally" revise this POLICY.

The Floodplain Criteria POLICY has since been undergoing re-formulation preparatory to its release as a draft "policy statement". Following another round of public consultation it will be submitted for Cabinet endorsement pursuant to Section 3 of the Planning Act.

Overview

As presently constituted the Floodplain Criteria POLICY has six features of concern to municipal official plans.

1. That floodplains be identified as the land inundated by the "Regulatory Flood." In much of the Province this is the "worst case" storm/flood event of Hurricane Hazel or the Timmins storm as calculated in various watersheds. In all other cases the 1:100 year storm/flood event defines the Regulatory Flood.

2. That floodplains, as defined above, be separately designated on a land use schedule of the municipal official plan and that areas where one zone, two zone and special policy area floodplain policies apply (see below) be shown separately as appropriate.

3. That municipal official plans follow one of three approaches for policy regulating floodplain areas as appropriate:

   a) One Zone - As a basic standard applying to all areas a one zone floodplain policy is to be pursued that prohibits further structural development in the floodplain, except for conservation utility and agricultural uses under some restricted conditions.

b) Two Zone - Where engineered floodplain mapping is available a floodway-floodplain fringe policy may be pursued with the approval of the Conservation Authority. This approach continues to prohibit development in the floodway area while permitting new development in the floodplain fringe where protection measures are to be taken to protect new structures to the elevation of the Regulatory Flood.

c) Special Policy Area With the prior approval of the Ministers of Natural Resources and Municipal Affairs, site specific floodplain policies and flood protection standards may be developed through official plans for areas of extensive urban development (such as downtowns) that exist within the floodplain. Such policies generally result in relaxed standards from floodplain regulation to the Regulatory flood level or permit development in the floodway. They should clearly define the nature and basis for reduced flood protection/increased flood risk.

4. That the requirement for municipalities to follow one of the three floodplain policy approaches above does not apply to small watersheds with an area of 125 hectares or less. These small watersheds should be dealt with instead on the basis of storm water management procedures.

5. That municipal zoning by-laws reflect the floodplain designation in urban areas through explicit zoning. Such zoning for floodplains is not required in rural areas where an otherwise restrictive zoning practice over non-farm land uses is followed.

6. The municipality must establish a method of regulating floodplain development through its zoning by-law or through site plan control which makes the municipality party to the control of floodplain development. It cannot completely delegate the effective regulation of any development in floodplains to the Conservation Authorities' Act permit system.

Regional Official Policies Plan Review Issues

The 1976 R.O.P.P. was formulated in a period of considerable uncertainty and change respecting the definition of floodplains and the relationship of municipal planning controls to floodplain management issues. Although the Regional Plan provided a firm commitment to the principle of floodplain controls and support to the development of planning policies in that regard, it did not set out any explicit policy requirements as to how such might be accomplished. Accordingly a comprehensive revision of R.O.P.P. is required to address the Floodplain Criteria POLICY.

MINERAL AGGREGATE RESOURCES PLANNING POLICY

Background

In the early 1970's the Ministry of Natural Resources and the Ministry of Transportation and Communications, undertook a series of major studies on the supply, transport and use of mineral aggregate resources (chiefly sand and gravel) in Central Ontario. These studies were initiated to respond to the Province's concern for the long term implications of municipal restrictions in creating shortages of the material in the Toronto-Hamilton area.

Studies were supervised by an inter-Ministerial task force known as the Mineral Aggregate Working Party. The Working Party presented its final report to the Minister of Natural Resources in December of 1976. Among other things this report recommended that Ministry policies be applied through Planning Act mechanisms to stem growing municipal restrictions over the extraction of sand and gravel that were seen to be adversely impacting the licencing of new areas and ultimately the cost of these products to consumers such as the Ministry of Transportation and Communications.

By May of 1978 the Working Party's recommendations had emerged within the Ministry of Natural Resources as a ten point POSITION statement entitled: "Mineral Aggregate Policies for Official Plans". This POSITION received executive endorsement by the Deputy Minister of Natural Resources in April 1979. The POSITION was thereafter applied in the Ministry's input and review functions for municipal planning activities.

In early 1979 at the approximate time of the POSITION'S endorsement by the Deputy Minister, a referral of the proposed Regional Official Plan for Durham was launched by the Ministry. The Region's proposed policy was typical of the period in restricting further mineral aggregate extraction except for local needs and thereby carrying the potential for supply constraints in the Toronto market. As part of the Ministry's arguments before the Ontario Municipal Board in September of 1979, the Minister of Natural Resources signed the "Mineral Aggregate Policy for Official Plans" statement enabling it to be presented in evidence during the hearing as "binding government policy". With this status the statement was not only effective in securing the decision the Ministry sought in the Durham case but served as a basis for its application elsewhere. In the course of this campaign throughout the Province the statement became more widely recognized by the title "The Ten Point Policy".

While the Ten Point Policy made good sense from the perspective of the Ministry of Natural Resources, the lack of effective consultation on its contents soon produced a number of significant difficulties in its application. Among these difficulties was the "rigid" prohibition on all residential, commercial or industrial development in high aggregate potential areas (Point 7) and the indication that the Ministry and not the Municipality would have ultimate authority for planning in such resource areas (Point 9). It quickly became apparent that a rigid application of the Ten Point Policy was not feasible, necessitating continual "interpretation" and revealing the need for its general reformulation.

The reformulation of the Ten Point Policy was undertaken during the final phase of the adoption of the new Planning Act, 1983. Following the release of the Ministry of Municipal Affairs draft "guideline" on the preparation of Policy Statements in 1982, the Ten Point Policy was reformulated into a policy statement format and retitled as the "Mineral Aggregate Resource Planning Policy" (M.A.R.P.).

The M.A.R.P. POLICY was presented to Cabinet on December 22, 1983 for endorsement in anticipation of the proclamation of the Planning Act, 1983. The M.A.R.P. POLICY was subsequently circulated to Municipalities in early 1983 as a draft policy statement. Since the fall of 1983 it has been undergoing review and revision preparatory to its presentation to Cabinet for final approval pursuant to Section 3 of the Planning Act. It should be noted that there has been no formal circulation of the detailed implementation "guideline" that gives specific meaning and substance to the very generalized content of the draft M.A.R.P. Policy Statement.

Overview

The major elements of the Mineral Aggregate Resource Planning POLICY of relevance to municipal Official Plans could be summarized as follows:

1. That Official Plans recognize and establish as permitted uses all legally existing pits and quarries and their ancilliary operations through a textual reference, map reference or designation or some combination thereof. The objective of this acknowledgment is to allow such existing operations to continue as separately zoned uses.

2. That Official Plans recognize as much of the high quality mineral aggregate resources identified by the Ministry of Natural Resources to exist in the municipality as realistically possible. This acknowledgement can also occur by text reference, map reference or designation or some combination thereof for lands outside existing extractive operations and other areas committed for imminent development or environmental protection. The objective is to define areas where future extraction is most likely to occur and where municipal planning actions will seek to maintain as much of the resource as feasible. Extraction need not be a permitted use in this designation or area, however.

3. That Official Plans establish policies to protect existing legal pit and quarry operations and high quality resource areas from infringement by uses which are incompatible with extraction and vice versa. Incompatible uses are generally any residential, commercial or industrial use that would be impeded by the effects of nearby extractive operations or would alternatively impede extraction through complaints that normal operations be modified or halted.

4. That Official Plans establish an explicit procedure for future extraction applications covering such matters as the nature of planning approvals required, information requirements and matters for municipal consideration in decisions including rehabilitation/after use, "good planning", environmental, transportation and related considerations.

5. That proposals for uses not compatible with extraction in mineral aggregate resource areas be subject to a justification procedure which includes an appraisal of the site versus other potential sites; the potential for extraction prior to, during or in sequence with the development of the proposed use; the impact of the proposed use on extractive operations or future extractive operations in the vicinity, an evaluation of the economic viability of extraction on the subject lands and consideration of the value of the resource versus the value or necessity of the proposed use; and whether adjacent uses would be incompatible with an ultimate extraction of resources on the site where the use does not preclude ultimate extraction (i.e., a golf course). Policies setting out such justification criteria in the evaluation of non-extractive use proposals should be included in the Official Plan.

6. That Official Plan Policies permit the establishment of wayside pits without the requirement for official plan or zoning amendments except for obviously incompatible circumstances such as areas of existing development and environmental significance.

Regional Official Policies Plan Review Issues

The R.O.P.P. has formally recognized all legally existing pit and quarry uses and has permitted the establishment of wayside pits without rezoning for many years. The only restriction upon this policy has been a prohibition of such uses within or directly adjacent to Environmentally Sensitive Policy Areas. Sand and Gravel Resource Policy Area designations are established by Map No. 3 based on resource inventory information available in 1974. Recent updated mapping from the Ontario Geological Survey provides a more accurate basis for these designations however. Within the Sand and Gravel Resource Policy Areas the establishment of further extractive operations is accorded "priority"; although the nature of this priority relative to other rural land uses is not clearly indicated.

The R.O.P.P. contains extensive policy coverage on the procedures and requirements associated with the review and approval of new proposed pits and quarries. Policy coverage on land use compatibility issues between extractive operations and other sensitive land uses is not clearly addressed as required by the M.A.R.P. POLICY. An explicit policy for justifying alternative uses of land in the resource area prior to extraction is not provided by the current R.O.P.P.

Considering that the R.O.P.P. predated the M.A.R.P. POLICY by six years many of its provision remain highly relevant and conform to the POLICY. Selective revision to address specific deficiencies and to update the Resource Policy Area designations is required.

LAND USE POLICY NEAR AIRPORTS

Background

Concern for the impact of airport noise on adjacent residential uses; or more particularly the impact of noise complaints on the operation or expansion of airports, arose in the late 1950's when plans for the original expansion of Toronto International Airport were underway. Until the late 1960's these concerns were expressed in an ad hoc fashion as a reaction to residential development proposals in the vicinity of airports where noise was presumed to be an issue. In the absence of a coherent method for representing and predicting the impact of aircraft noise, this reactive approach was not particularly effective at halting the encroachment of incompatible uses.

In the late 1960's Transport Canada and the Central Mortgage and Housing Corporation (C.M.H.C.) developed a preliminary system for aircraft/airport noise measurement called the Composite Noise Rating. This system established predicted noise "contours" or concentric zones around airport runways and taxiways of different intensities. In October 1969 the Minister of Municipal Affairs announced a POSITION that included the adoption of the Composite Noise Rating contours developed by the federal government as a "restraint" to land use planning in the vicinity of Toronto International Airport and other airports for which contours had been developed. The policy applied only to industrial, commercial and residential uses and sought to prohibit such uses in specified noise zones. It did not clearly provide for noise impact attenuation through special construction procedures.

In the 1970's the National Research Council and C.M.H.C. spent a great deal of effort developing construction standards for acoustical attenuation. At the same time the Composite Noise Rating contour system came under attack for failing to adequately represent the variability of airport noise or the specific nature of aircraft engine sound frequencies. By the mid-1970's this led the federal government to adopt a new airport noise measurement and predictive system known as the Noise Exposure Forecast (NEF). C.M.H.C. and Transport Canada thereafter embarked on a program of NEF contour calculation for many of airports throughout the nation.

In 1978 the provincial POSITION on airport noise was elevated to POLICY status with the approval of the Land Use Policy Near Airports by Cabinet in March 1978 and extensively circulated to municipalities thereafter. This POLICY considerably expanded the range of uses subject to noise controls; set clearer, more justifiable restraints on land using the NEF contour system and referenced the standards for acoustical construction practices developed by the National Research Council for Canada Mortgage and Housing Corporation. Although the Land Use Policy Near Airports POLICY arose under the apparent control of the former Ministry of Housing, responsibility for the day to day administration of the policy has long been informally transferred to the Ministry of the Environment.

The emerging status of this POLICY relative to Section 3 of the new Planning Act is not yet clear. The Ministry of the Environment has made some preliminary attempts to incorporate the POLICY in a draft policy statement on "Environmental Compatability," but this has not emerged beyond the draft discussion stage at present.

Overview

The Airport Noise POLICY defines three classes of land use that potentially impact or are impacted by airport noise. These are:

A) residential uses, schools, libraries, theatres, auditoriums, passive parks, hospitals, nursing homes and camping or picnic areas.

B) hotels, motels, retail or service commercial uses, offices, active recreational parks and facilities, playgrounds.

C) industrial, warehousing or general agricultural uses, animal husbandry, arenas.

The POLICY requires municipal Official Plans to regulate these three classes of use by appropriate designations or textual references corresponding to the following noise (NEF contour)* levels identified by Transport Canada for airports specifically listed in a schedule to the POLICY.

1. In the 28-30 NEF contour zone all uses listed in A, B and C above may be permitted. However, uses listed in group A should be subject to some acoustical construction requirements imposed by the approval authority in consultation with Ministry of the Environment as a condition of various planning approvals.

2. In the 30-35 NEF contour zone group A uses should be prohibited or restricted and if permitted they must be subject to acoustical construction requirements by the muicipal Official Plan as determined by Canada Mortgage and Housing Corporation and the Ministry of Municipal Affairs.

3. In the 35-40 NEF contour zone all group A uses must be prohibited and group B uses subject to acoustical construction requirements if permitted on the basis of standards established by Canada Mortgage and Housing Corporation.

4. In the 40+ NEF contour zone only group C uses should be permitted. Group B uses may be permitted in some cases with special acoustical construction measures.

The application of the POLICY to airports not specifically referenced in the Schedule which forms part of the document, is not clear (i.e., general aviation airports that have received scheduled air service since 1978 or, to airports on the schedule whose NEF noise contour calculations have expired and have not been updated (such as the Waterloo-Guelph Airport).

*Noise Exposure Projection (NEP) contours have been developed and applied in place of NEF contours for some airports where a longer term control of noise impacts was a major concern. The authority for this sort of modification to be addressed under this Policy is unclear.

Regional Official Policies Plan Review Issues

Regional Official Policies Plan policy provides a very clear commitment to the objectives of the Airport Noise POLICY but effectively delegates responsibility to ensure conformity to Area Municipal Official Plans. A more definitive airport noise policy was adopted in 1980 by Regional Council resolution and served as the basis for requiring policies in the City of Kitchener that complied with the Airport Noise POLICY. It should be noted, however, that the NEF contour regulations for the Waterloo-Guelph Airport expired in 1985 and no timetable has been set for their update and, it is not clear which agency (Municipal Affairs, Ministry of the Environment, or Transport Canada) bears responsibility for an update. The effect of this expiry on the application of the Airport Noise POLICY requires clarification.

NEW RESIDENTIAL DEVELOPMENT ADJACENT TO FREEWAYS

Background

In the early 1970's the Ministry of Transportation and Communications began to respond to persistent complaints of excessive freeway noise in the Ottawa and Toronto vicinity from established residential areas. The Ministry entered into an program of barrier construction to attenuate noise impacts from freeway segments where residential uses were particularly close by. It was quickly recognized, however, that continuing encroachment of residential uses upon freeways could result in excessive demands for barrier construction that may not be technically or financially possible.

Unlike the task of mitigating existing noise impacts, a policy of avoiding future impacts required predictive capability to determine the degree of future noise and the feasibility of mitigation measures. In the mid 1970's the Ministry of Transportation and Communications therefore began a series of studies which lead to the development of the Ontario Highway Noise Prediction Method. This model enabled reliable forecasts of noise levels from freeways and other major roads to be calculated.

During the same period the issue of noise was receiving considerable attention at the Ministry of the Environment as well. Noise had been recognized as an "environmental contaminant" by the 1971 Environmental Protection Act. This prompted an extensive analysis by the Ministry of the Environment to develop appropriate acoustical standards for noise generators and receptors.

In 1976 the two Ministries were brought together by the Ministry of Housing to develop a formal policy on freeway noise. This policy used the M.T.C. predictive model was combined with the noise standards developed by the Ministry of the Environment. In February 1979 the Guidelines on Noise and New Residential Development Adjacent to Freeways POLICY (hereafter Freeway Noise POLICY) was jointly announced by the Ministers of Housing and Transportation and Communications following Cabinet approval. The POLICY was tabled in the Legislature shortly thereafter and distributed to all municipalities and planning authorities.

Because the Ministry of the Environment had the technical expertise on the subject of noise for the purposes of the Environmental Protection Act, administrative authority for the Freeway Noise POLICY was informally transferred to them. Since 1979 the Ministry of the Environment has "interpreted" the Freeway Noise POLICY to expand its application; (a) from a strict focus on freeways (or grade separated arterial highways) to all classes of arterial roads and (b) from a strict focus on residential development to all classes of sensitive land use as identified in the Airport Noise Policy. Since there has been no formal revision of the Freeway Noise POLICY to accomplish these expansions in scope, the other applications should be considered a POSITION in the context of this Report (see pages 51-54).

As discussed in respect of the Airport Noise POLICY the current direction of reformulation of the Freeway Noise POLICY to respond to the new Planning Act is unclear. This POLICY is also being dealt with under the proposed draft "Environmental Compatability" policy proposal of the Ministry of the Environment.

Overview

The contents of the Freeway Noise POLICY as they apply to municipal Official Plans are not explicit. The policy merely indicates that official plans reflect the policy in a manner which is subject to the discretion of the Ministries of the Environment and Housing. However, the basic requirements are generally as follows:

1. That the official plan acknowledge the potential for freeway noise to impact adjacent residential development and indicate that proposed amendments, subdivisions and other planning approvals adjacent to such freeways are to be circulated to the Ministry of the Environment for review and comment and that additional information/studies may be required of the proponent of the new residential development. Such additional information will include the location of the freeway relative to the application, a detailed site plan showing topography, elevation and layout of existing and proposed buildings, and the calculation of anticipated noise levels on the site based on approved techniques.

2. That the Official Plan designate lands adjacent to freeways for commercial, light industrial, recreational or agricultural uses that will serve to buffer residential areas. If residential designations must be established adjacent to freeways suitably designed high and medium density development should be emphasized as these are more adaptable to the noise environment than low density residential uses.

3. That the official plan acknowledge noise standards applicable to new residential development adjacent to freeways by general reference to the provincial POLICY or reference to the following standards:

   a) all new residential development subject to more than a 55 dBA noise level from an adjacent freeway will require attenuation to the lowest level technically, administratively and financially feasible in each case (in the opinion of M.O.E. and the approval authority);

   b) New residential development is to be prohibited where attenuated noise levels from an adjacent freeway exceed 70 dBA;

   c) New residential development subject to attenuated noise levels greater than 55 dBA but not greater than 70 dBA shall be required to inform prospective purchasers of the noise condition by some appropriate means.

4. That the official plan indicate where residential development precedes the construction of a designated freeway, conditions such as requirements to dedicate land or money for the future erection of noise barriers may be applied.

Regional Official Policies Plan Review Issues

The policies of the 1976 R.O.P.P. provide general acknowledgement of noise issues related to roads and highways. A general commitment is also given to the regulation of new development of all forms to mitigate noise impacts from Regional Roads. The R.O.P.P. does not specifically address the application of noise-related policy to Provincial Highways and Freeways nor does it specify specific acoustical standards and policy procedures in this regard.

Notwithstanding the very generalized nature of R.O.P.P. policy on this subject, Regional Council has implemented a comprehensive "policy" on road and railway-related noise having been informally delegated this function by the Ministry of the Environment in 1981. Incorporation of appropriate portions of these established "policies" previously adopted by Regional Council resolution into the R.O.P.P. would address the Freeway Noise POLICY.

PSEUDO - POLICIES

WETLAND GUIDELINES

Background

Wetlands have long been recognized as the last vestige of "natural" or "wilderness" landscapes in Southern Ontario. Since the turn of the century over seventy-five percent of the original wetlands in Southern Ontario have disappeared due to land clearing, drainage, filling, dam construction and other human disturbances. The remaining wetland environments have considerable importance for many groups who value the resources found within these areas including fishermen, hunters, naturalists, outdoor recreationalists and water resource managers.

In the 1970's concern for the continuing disappearance of wetlands was galvanized by the Federation of Ontario Naturalists who engaged in an extensive public education and lobbying campaign to support wetland protection. The Federation also developed an evaluation system to better define and categorize wetlands in Southern Ontario.

By 1977 the Ministry of Natural Resources agreed to investigate the subject. An inter-Ministerial task force, chaired by representatives from the Resource Policy Secretariat was organized. After considerable internal debate this task force issued a report to participating Ministries in 1980. While the objective of wetland protection was endorsed, the task force report did not meet with general acceptance as to how this might be accomplished.

In 1981 the Wildlife Branch of the Ministry of Natural Resources developed a public discussion paper largely on the basis of the earlier task force report entitled "Towards a Wetland Policy for Ontario". This was released in September of 1981 to all Ministries, Municipalities and interested organizations. The response received to this circulation was generally positive but once again disagreement and uncertainty surfaced as to how to implement the objective.

In 1982 the Ministry of Natural Resources was assigned to pursue the wetland issue as a major policy initiative. It developed, in consultation with other resource Ministries, a draft policy statement known as the Wetland Guidelines. Endorsement of the Wetland Guidelines by Cabinet and its circulation to municipalities and other interested groups in 1984 as a tentative policy requirement of the Provincial Government catapulted the Guidelines to PSEUDO-POLICY status. Information issued at the time of circulation indicated that adoption of the PSEUDO-POLICY in Official Plans would be voluntary until the Guidelines are elevated to policy statement status in the future. At the same time the Ministry of Natural Resources initiated a program to identify and classify all wetlands in Southern Ontario. This inventory is intended to resolve continuing uncertainty and disagreement over specific wetland values.

At present, the wetland inventory is still underway. Until the inventory is completed and continuing concern on implementation procedures are resolved it currently appears unlikely that the Wetland Guideline PSEUDO-POLICY will be proceeding to policy statement status under the new Planning Act.

Overview

The approach of the Wetland Guidelines PSEUDO-POLICY mirrors a number of similar resource-based POSITIONS of the Ministry of Natural Resources. It is founded upon a comprehensive inventory of significant wetland areas that is currently being prepared for Southern Ontario. This wetlands inventory categorizes wetlands into seven classes based on a detailed evaluation of their resource characteristics. Areas identified in the inventory as Class 1 or 2 wetlands are considered "provincially significant" and are the primary focus of the PSEUDO-POLICY. Areas ranked as Class 3 to 7 wetlands may be placed under the umbrella wetlands policy of municipal official plans at the discretion of local Councils.

The Wetlands Guidelines PSEUDO-POLICY requires municipal official plans to:

1. Acknowledge the existence and value of wetlands and provide a general commitment to protect such resources from incompatible activities where possible.

2. Designate, identify or acknowledge individual Class 1 and 2 wetlands (and any other Class 3 to 7 wetlands Council may consider to be regionally or locally significant). This can be accomplished by a formal Official Plan designation, policy description or reference to appendix maps or wetland inventory mapping developed by the Ministry of Natural Resources.

3. Establish policies to permit within wetlands only compatible activities such as forestry, aquaculture, fisheries management, wild rice or waterfowl production, open space or passive recreational uses, and other uses that may be determined to be compatible to "wetland values" upon a case-by-case review. Recent Ministry of Natural Resources literature appears to have added "agriculture" to the list of permitted uses. The true status of this expansion relative to the Cabinet endorsed version is unclear.

4. Establish a policy to consult with the Ministry of Natural Resources prior to the consideration of rezoning proposals for potentially incompatible uses.

5. Establish a policy to consider wetland values and only permit those activities which are determined to be compatible with the management of "wetland values" in the rezoning process.

Since no supporting "guideline" has been issued to explain the meaning of "wetland values" to outline procedures for determining what constitutes "acceptable" or "unacceptable" intrusions by incompatible uses or to establish standards for the construction and operation of "incompatible" uses within wetlands, the true meaning and practical impact of the above requirements in municipal planning procedures are far from clear at this time.

Regional Official Policies Plan Review Issues

The Environmentally Sensitive Areas policies of the R.O.P.P. maintain a very strong commitment to the protection of important natural environments, including several wetlands. Based on preliminary information from Ministry of Natural Resources, all Class 1 and 2 wetlands under their classification system are already designated as E.S.P.A.'s. Regional Official Policies Plan policies applicable in these areas generally exceed the requirements of the Wetland Guidelines with the exception that agriculture/farming is a permitted use and no requirement for separate zoning of such areas is imposed due to the questionable legal issues associated with such an action.

Perhaps the most significant issue of concern in the revision of the R.O.P.P. relates to the potential interpretive impact of the Wetland Guidelines upon the E.S.P.A. policy. Wetlands are categorized on the basis of a much different system than E.S.P.A.'s. This system gives comparatively less weight to the biological features and ecological functions of central concern in the definition of E.S.P.A.'s. Wetlands of very great significance under the E.S.P.A. system may therefore be accorded a lower class status under the Wetland Guidelines PSEUDO-POLICY. Conversely wetlands of comparatively high status under the system used by the Wetland Guidelines may not achieve E.S.P.A. status under the R.O.P.P. classification system. In view of the fact that such impacts are reciprocal, no operational problems to the continued application of the Region's E.S.P.A. policy is envisaged.

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AGRICULTURAL CODE OF PRACTICE

Background

The Agricultural Code of Practice originated in early 1970 as one of the Ministry of Agriculture and Food's standard information circulars to farmers and agricultural engineers. Its purpose was to outline manure handling measures and dead animal disposal/treatment systems which farms might use to reduce environmental pollution and limit the effects of odour. In 1973 this circular was expanded into the Suggested Agricultural Code of Practice to establish specific criteria for the creation and expansion of livestock facilities and the calculation of appropriate "minimum separation distances" between such barns and rural non-farm residences. In the process the Code was effectively elevated in status to a Ministry POSITION with the inclusion of "certificate of compliance" procedures that served as an enforcement mechanism for the Code's "voluntary" policies.

After 1973 Ontario agriculture went through a major period of economic consolidation and growth financed to a growing degree by commercial lending institutions. During this period some lenders, notably the Farm Credit Corporation, began to require compliance to the Code as a pre-condition to loans and mortgages for livestock operations. This action generated considerable controversy as the Suggested Code of Agricultural Practice required appropriate separation distances for barns but no reciprocal restraints on rural non-farm residences which made those separations necessary in the first place.

In early 1976 the Code was again revised by the Ministries of Agriculture and Food, Environment and Housing as the Agricultural Code of Practice. While the revised Code carries the full support of these Ministries there is no clear evidence to indicate formal Ministerial or Cabinet ratification of the document occurred. This revision included policies and separation distance formulae for the establishment of residential uses and lots adjacent to livestock operations. However, implementation of these requirements upon non-farm residences were not automatic, but depended upon incorporation of Code provisions in municipal Official Plans and zoning by-laws.

Since 1976 application of the Code through municipal planning documents has increased as its application through financial institutions diminished in response to earlier controversy within the farm sector. The 1978 Foodland Guidelines POLICY has been primarily responsible for this growing municipal application with its references (Section 4A.4, 4A.10, 4A.20, 4A.26, and 4B.5) requiring municipal official plans to embrace the requirements of the Code and "encouraging" the inclusion of Minimum Separation Distance formulae in zoning by-laws.

The Code has is now undergoing another extensive revision preparatory to the release of the Foodland Preservation Policy Statement as a draft policy statement. This revision will complete the evolution of the Code from an information document on manure management oriented to farmers, to a document on the separation of livestock facilities and rural non-farm uses oriented to municipal planning programs. This revision is intended to rectify remaining inequities in the minimum distance separation formulae and clarify calculation of separation distances for the benefit of municipalities.

*Subsequently released immediately prior to the release of this Report.

Overview

The Agricultural Code of Practice has the following elements of concern to municipal Official Plans and other planning documents.

1) Municipal Official Plans must refer to compliance with the Code as a reciprocal requirement for livestock operations and rural non-farm uses.

2) Consideration of Code requirements must be made to establish adequate separation distances in zoning by-laws and consent or minor variance decisions.

3) The Minimum Distance Separation formulae apply as follows:

   a) Creation, renovation and expansion of rural non-farm uses must comply with Formula I;

   b) Creation, renovation and expansion of livestock facilities must comply with Formula II. For the renovation and expansion of existing barns, separation distances may be modified from the Formula II calculation at the discretion of the Agricultural Engineer where manure treatment systems are also installed.

   c) Existing livestock operations not undergoing renovation and expansion must comply with Formula III.

   The MDS formulae do not apply to farm residences.

All other elements of the code are advisory to farm operators. Although some elements, such as the calculation of manure spreading areas based on soil class, may be applicable to the identification of minimum farm sizes for new livestock operations, they have never been required or applied in this manner by the Ministry.

Regional Official Policies Plan Review Issues

The R.O.P.P. has demanded compliance with the Agricultural Code of Practice in the creation of non-farm lots and the establishment of new livestock operations since 1976. The Code's application in proposals to designate or expand residential settlement areas adjacent to existing livestock operations might require clarification. Incorporation of Code requirements in Area Municipal Zoning By-laws has generally occurred through fixed separation distance requirements rather than adoption of the Code formulae at the discretion of Area Municipal Councils. Improvements or changes to the Code formulae to make it more easily administered might suggest that the fixed separation distance approach in zoning by-laws should be reviewed.

GROUP HOMES

Background

Throughout the 1970's changes in the practice of treating people with mental, physical, emotional and behavioural difficulties resulted in large numbers being released from institutional care. Out-patient and residential treatment services are now seen to be the more appropriate and cost-effective means of servicing the needs of such persons. However, as larger numbers of people were released or denied access to institutions, severe shortages in proper residential facilities suited to their special needs quickly developed. These shortages persist, particularly for some groups such as those with criminal and psychiatric backgrounds.

By the mid 1970's the Provincial government saw this shortage in residential facilities as due to "restrictive" municipal planning controls that failed to recognize the new approach to social service delivery. At the time most municipalities did not address the subject of residential care facilities, or "group homes" as they came to be termed. Most municipal by-laws were structured in such a way as to treat these uses as institutions or boarding houses which in turn required Official Plan or zoning amendments to establish outside of very restrictive circumstances. Uncertainty as to the true nature and effect of group home uses tended to generate considerable controversy from affected ratepayer groups.

The entire issue was brought to a head in the wake of the Supreme Court decision re: Bell. This decision invalidated the common municipal zoning practice of restricting occupancy of low density residential units to "families" related by blood or marriage. This decision was seen to imply that virtually every residential neighbourhood could be opened up for access by all classes of group homes. As a result, controversy associated with the development of these facilities was heightened.

In early 1978 an inter-ministerial study group was established to examine the group home issue. Their report was subsequently endorsed by Cabinet and announced by the Provincial Secretary for Social Development in September 1978 as the Provincial Group Homes Policy. It was extensively circulated to municipalities at that time.

The Group Homes PSEUDO-POLICY "encourages" municipalities to amend their Official Plan and zoning controls to permit the establishment of group homes in residential areas. Although the PSEUDO-POLICY appears discretionary it has been administered by the Ministry of Municipal Affairs since 1978 so as to generally "require" municipalities to address the issue. The discretion associated with the PSEUDO-POLICY is largely focused on the extent or circumstances under which group homes are to be permitted in various municipal sub-areas, but even here there are some "non-negotiable" elements. A comparable position on the PSEUDO-POLICY has generally been followed by the Ontario Municipal Board.

Overview

The Group Home PSEUDO-POLICY requires municipal official plans to:

1. provide a definition of group homes that recognizes various facilities licenced or approved under Provincial social service programs including children's residences, residences for the developmentally handicapped, senior citizen residences, halfway houses for alcoholics, the socially disadvantaged and ex-offenders.

2. recognize and permit the continuance of all existing group homes in a municipality.

3. permit the establishment of new group homes in all areas zoned to permit residential uses without requirements for rezonings or other municipal approvals.

4. establish a mechanism to be implemented by the zoning by-law to prevent the undue concentration of group homes in any one area or the location of certain types of group homes in appropriate residential districts.

Regional Official Policies Plan Review Issues

The matter of Group Home Policy in the R.O.P.P. has been dealt with through Amendment No. 5. This policy essentially delegates responsibility for addressing group home issues to Area Municipal Councils.

POSITIONS

HERITAGE PLANNING GUIDELINES

Background

Concern for the protection of historic and architecturally unique structures, archaeological sites and other heritage resources grew steadily in the 1960's in reaction to destruction or erosion of these features by widespread growth and redevelopment. In this period an increasing number of municipalities petitioned the Legislature for individual legislation to control the demolition or alteration of heritage structures. At the same time the Province became increasingly active in its concern for major historic sites and archaeological resources through the Parks Branch of the Ministry of Natural Resources.

In response to these growing but disparate interests the Ontario Heritage Foundation was established in 1967 to promote and co-ordinate conservation efforts. One of the early initiatives of the Foundation was to direct a major study on heritage conservation issues. A draft report from this study was released for public comment in 1971 and drew widespread support for its recommendations for a more comprehensive approach to heritage resource management. This support resulted in the passage of the Ontario Heritage Act of 1975.

The Act extended demolition/alteration controls that were previously the subject of individual municipal Acts to all municipalities under a more coherent administrative system. Part VI of the Act formalized the Province's emerging authority over archaeological resources. Administration of the Act's controls for heritage resources was a central mandate for the Ministry of Culture and Recreation when it was established in 1975.

In the early years of its implementation the Ontario Heritage Act was seen to be largely a "parallel" or "superior" process to municipal planning actions. However, by the late 1970's experience began to reveal the relationships between heritage management and municipal planning activities. The capacity of municipal planning policies to support or pre-empt heritage conservation efforts by creating development and redevelopment expectations was recognized. Accordingly, the Ministry of Citizenship and Culture has slowly become more involved in the municipal planning approval process. In recent years the Ministry has developed a POSITION that seeks Official Plan policy recognition of heritage resources interests and provides general guidance for protecting such resources from unwarranted destruction or infringement by inappropriate development.

Overview

The Ministry's POSITION governing heritage policy content in Official Plans has been documented comparatively recently. In late 1985 the Ministry circulated its Advisory Notes on Heritage Conservation and Municipal Planning which outlined the substance of its POSITION as developed over the preceding decade. The Advisory Notes contain the following major elements respecting Official Plans:

1. That the Official Plan acknowledge the existence of heritage resources (whether documented by previous surveys or not) and provide a general commitment to consider such resources and protect them from unwarranted destruction or infringement in the review and approval of development proposals under the Planning Act and for public works developed in accordance with the Official Plan and the Environmental Assessment Act.

2. That where the municipality employs or intends to pursue heritage conservation procedures under PARTS IV and V of the Ontario Heritage Act, the Official Plan establish explicit policies to support this activity on such matters as:

   - the use of zoning by-laws, bonus zoning, etc. to establish land uses appropriate to heritage features and apply regulations on new development which are sympathetic in bulk, height, character and use.

   - the use of site plan control, sign by-laws, severance and minor variance procedures to ensure the compatible development of heritage resource lands and adjacent properties with established uses.

   - the use of neighbourhood planning, community improvement and subdivision procedures to identify and protect heritage resources as a condition of development.

3. That Official Plan policies acknowledge the significance of archaeological sites and the potential impact of Part VI controls over the development of such lands, and thereby commit to the consideration and protection of archaeological resources through the development approval process, particularly the consent and subdivision processes.

Regional Official Policies Plan Review Issues

Most of the policy objectives of the 1976 R.O.P.P. in heritage resource matters have now been accomplished through the efforts of the Waterloo Heritage Foundation, Local Architectural Conservation Advisory Committees and the Region's Historic Sites Department. A renewed commitment to heritage issues essentially involves consideration of items 2 and 3 of the Ministry's POSITION.

While most of the specific development control actions relating to heritage building conservation rest with Area Municipalities, Regional Council adopted a resolution policy on the severance of designated heritage structures within proposed subdivision plans that should be considered for incorporation and potential expansion to other circumstances. New policies governing archeological resource identification and procedures for their evaluation and protection in the planning approval process might also be appropriate for the Regional Plan. In this regard the need for comprehensive field studies and the protection of identifiable archeological sites from vandalism are important considerations.

NOISE AND NEW RESIDENTIAL DEVELOPMENT

Background

The Environmental Protection Act identifies "noise" as a contaminant. This establishes a very broad mandate for the Ministry of the Environment to pursue noise related policy requirements. Based on this mandate the Ministry has amplified the somewhat narrow focus of the Freeway Noise and Airport Noise POLICIES previously discussed.

This expanded interest in noise grew from a 1975 commitment by the Ministry to provide alternative municipal controls for noise than the very restrictive, antiquated provisions on the subject under the Municipal Act. This commitment led to a series of major studies and technical review procedures within the Ministry that culminated in the production of "A Model Municipal Noise Control By-law in August of 1978. This document contains both suggested by-law formats and a very extensive appendix relating to noise standards and measurement techniques for various noise sources.

Although the Model Municipal Noise Control By-law document's status is unclear within the Provincial administration, it has subsequently evolved as a Ministry POSITION through the Planning Act input and review function (among others). The document serves to extend the Ministry's interests on noise to cover a variety of land uses and building occupancy uses and their relationship to all classes of highways, arterial roads, railways and certain industrial, commercial and agricultural uses.

As previously indicated, efforts are now underway within the Ministry of the Environment to incorporate the provisions of several POLICIES and POSITIONS into a draft "Environmental Compatability" policy statement. Noise related policies are included in this initiative.

Overview

The expression of the Ministry's general noise requirements through Official Plans and other planning controls is not coherently established by the "Model Municipal Noise Control By-law document. From a practical standpoint it would involve at least some policy recognition of the potential impact of noise on various sensitive land uses and major categories of noise generators identified on the attached Table 1. The Ministry's POSITION extends the scope of noise sensitive land uses from simply "residential" as set out in the Freeway Noise POLICY to most of the uses specified in detail by the Airport Noise POLICY. These "additional" sensitive land uses include: passive park space, schools, libraries, theatres, auditoria, hospitals, nursing homes and camping areas. Hotels, motels, commercial stores, offices and active recreational areas also fall under the policy in certain high noise situations. The standards applied to these sensitive land uses are established in relation to technical noise criteria for five classes of noise generators as outlined by the attached Table 1.

TABLE I

NOISE LEVEL GUIDELINES
(Current Guidelines Used by MOE Staff)

PLAN REVIEW - FOR NEW RESIDENTIAL DEVELOPMENT

NOISE SOURCE	SOUND OR VIBRATION LEVELS	DEFINED BY
Airports	Policy permits 35 NEF/NEP upper limit	"Land Use Policy Near Airports"
Railways	L_{eq} 55 dBA outdoor recreational areas (07:00–23:00) L_{eq} 45 dBA living rooms, etc. (07:00–23:00) L_{eq} 50 dBA outdoor areas (23:00–07:00) L_{eq} 40 dBA bedrooms (23:00–07:00)	NPC–131 Note: Provincial policy under preparation
Freeways	a) L_{eq} 55dBA outdoor recreational areas (24 hours) b) L_{eq} 45 dBA living rooms, etc. (07:00–23:00) c) L_{eq} 40 dBA bedrooms (23:00–07:00)	"Guidelines On Noise and New Residential Development Adjacent to Freeways" (Provincial Policy) for a) NPC–131 for b) and c)
Highways	L_{eq} 55dBA (L_{50} 52 dBA) outdoor recreational areas (07:00–23:00) L_{eq} 45 dBA living rooms, etc. (07:00–23:00) L_{eq} 50 dBA (L_{50} 47 dBA) outdoor areas (23:00:07:00) L_{eq} 40 dBA bedrooms (23:00–07:00)	NPC–131
Commercial/ Industrial	L_{eq} 55 dBA (L_{50} 52 dBA)* outdoor recreational areas (07:00–23:00)	

NOISE SOURCE	SOUND OR VIBRATION LEVELS	DEFINED BY
(cont'd) Commercial/ Industrial	L_{eq} 50 dBA (L_{50} 47 dBA)* outdoor areas (23:00-07:00) L_{eq} 45 dBA living rooms, etc. (07:00-23:00) L_{eq} 40 dBA bedrooms (23:00-07:00) For situations involving unusual noises, including impulsive, buzzing, quasi impulsive sounds, blasting etc. vibration, consultation with Noise Assessment Unit is advised. * Only considered where source produces near constant sound levels.	NPC-131

The application of these policy criteria through an Official Plan would be promoted through general references to noise as a determinant of land use compatibility. A specific policy commitment to consider noise issues, to require noise studies at the recommendation of the Ministry of the Environment and subject to their evaluation would also appear necessary within an Official Plan. Detailed requirements would then to be applied on a selective basis for case specific Official Plan Amendments, neighbourhood or secondary plans, zoning by-law amendments, plans of subdivision and land severances. The capability of the municipality to coherently implement noise abatement procedures recommended by Ministry of the Environment obviously varies with the nature of the planning application.

Regional Official Policies Plan Review Issues

The R.O.P.P. addresses specific policies to noise issues only in relation to facilities of major Regional interest such as Regional roads and the airport. The Plan does not address noise in the context of commercial or agricultural uses and deals with industrial noise in only very oblique terms.

Over the last decade a consensus has slowly emerged on the division of Regional and Area Municipal interests that generally assigns specific land use compatibility, design and similar "good planning" responsibilities to lower tier municipalities. In this context the first issue to be addressed in the review of the R.O.P.P. is whether the subject is even appropriate for Regional Plan coverage.

In considering a more expansive policy on the subject the great variability and unpredictability of noise impacts from land use sources must be considered. Since adverse noise impacts are in a large part the result of production processes, management and maintenance factors which fall outside Planning Act controls, "slight" changes in land use (i.e., a change in occupancy by industry type) or in these other factors may create or remove noise impacts without the opportunity for municipal control. Since the issue primarily affects older, developed urban areas the opportunities for mitigation of the kind permitted by planning controls (i.e., land use separations, landscaping, berms, etc.), are frequently limited. Experience in noise policy implementation respecting Regional Roads confirms that the legislative authority to implement some of these mitigation measures is questionable in some areas (i.e., rezonings, site plan control).

Finally, the implementation of such policies must necessarily rely upon the specialized technical expertise, information and active involvement of the Ministry of the Environment for most Area Municipalities. The extent of this reliance poses questions as to whether the municipality is playing a meaningful role in the process or merely acting to overcome deficiencies in the Ministry's legislative mandate.

AIR POLLUTION COMPATIBILITY

Background

The Environmental Protection Act provides the Ministry of the Environment with primary responsibility for air pollution issues. The Ministry has pursued this mandate through a complex system of regulating air pollution generators under Regulations 296 and 308 of the legislation. Through the Certificate of Approval procedure the Ministry determines case by case air quality requirements for each pollution generator that takes technical feasibility, cost and the potential for adverse impact on surrounding land uses into account. An air pollution generator located in an area well removed from any sensitive land uses that might be adversely affected by its emissions is thereby required to have less controls for some emissions such as odour than one relatively close to sensitive land uses.

Land use surrounding emission sources does not remain static. New developments can interfere with the operation of emission control facilities (i.e., smokestack plumes) or may introduce residential or other sensitive land uses into an area where the level or type of emissions previously permitted by the Ministry could no longer be considered acceptable. The resultant operational problems or complaints created by these new land uses force the Ministry to impose more stringent emission standards on the pollution generator. These may be technically or financially difficult to achieve.

This situation has lead the Ministry to take an increasing interest in municipal land use policies that would undermine the integrity of its established pollution control requirements for "major" generators or groups of generators such as industrial parks. The focus of this interest is to restrict adjacent developments that the Ministry considers as incompatible with existing pollution control requirements.

For most emission generators the area of impact can only be determined in a judgemental fashion by the Ministry based on the nature of the emission, the nature of the receptor land use, topographic and atmospheric conditions, etc. Should the emission generator go out of business, change its production techniques or product outputs, the size or necessity for an area of influence surrounding the generator may change or disappear altogether.

In mid 1984 the Ministry of the Environment initiated a publication series entitled the "Municipal Environmental Planning Series" designed to inform municipal authorities of its land use planning interests and "policy" positions. One component of this package entitled Air Pollution Considerations for Municipal Planning sets out the Ministry's policy POSITION on the subject for the first time.

Overview

The Air Pollution Considerations POSITION document does not set out specific requirements for municipal planning policies on land use controls as different situations of land use incompatibility resulting from air pollution would require different responses. The focus of the POSITION is on Official Plan policies and designations. The main objective of this interest is to prevent designations or policies permitting development of air pollution generators or pollution sensitive receptors such as residential uses, hospitals, nursing homes and homes for the aged in such proximity to one another as to be deemed "incompatible" by the Ministry on a case by case review. The Ministry also has an interest in obtaining general policy acknowledgements of land use compatibility/separation concepts regarding air pollution to serve as the basis for similarly discretionary interventions in zoning by-law, plan of subdivision and land severance cases where incompatibility is judged to exist.

Regional Official Policies Plan Review Issues

As discussed in the previous section on noise, the Regional Plan's coverage on the subject of air pollution is very cursory. Similarly the principle of the issue's regional versus local significance must be considered at the outset.

Both Area and Regional Councils have attempted in the past to reconcile situations of established air pollution conflict on a case by case basis. Appropriate separation and buffering efforts are also common for new land use designations. However, in areas of existing development the operation of planning controls is not easily reconciled to the highly technical and extremely variable nature of both the Ministry's air pollution regulations and the operation of established land uses. Given the reliance that must be placed upon the Ministry for implementation purposes the issue of an appropriate municipal role is also a relevant issue on this subject.

SEWAGE TREATMENT FACILITIES AND SENSITIVE LAND USES

Background

In fulfilling its mandate under the Ontario Water Resources Act, the Ministry of the Environment has financed, constructed or continues to operate a very large number of sewage treatment plants. While the treatment systems in these plants may differ, all produce varying degrees of odour or sulphurous air pollution that can be offensive. Normal operational practices or unexpected changes in effluent characteristics can also produce levels of offensive odours from a treatment facility at times.

In the course of the development, expansion or operation of sewage treatment facilities the Ministry and municipalities have frequently been confronted with complaints about objectionable odours. In a number of cases this has resulted in the necessity to acquire buffer areas surrounding plant sites and/or installing special odour containment and collection facilties (i.e., Preston Sewage Treatment Plant). In order to minimize such costly measures, the Ministry has maintained a separate POSITION on the development of land uses adjacent to sewage treatment facilities for many years prior to its more recent POSITION statement on the issues of air pollution and environmental compatibility. The basic objective of this POSITION is to prevent residential uses from encroaching on sewage treatment facilities.

Overview

The Ministry's POSITION identifies three classes of sewage treatment facilities as subject to concern:

A) Sewage Treatment Plants with rated capacity up to 25,000 cubic metres per day,

B) Sewage Treatment Plants with rated capacity in excess of 25,000 cubic metres per day, and

C) Waste Stabilization Ponds.

The Ministry's position is that "sensitive uses" (as determined by Ministry staff in each case) be prohibited or restricted in proximity to the sewage treatment facilities outlined above as follows:

1. For Group A a sewage treatment plants, no sensitive uses are to be permitted within 100 metres of the odour source. Sensitive uses permitted with 150 metres of the odour source should be subject to warning clauses.

2. For Group B sewage treatment plants, no sensitive land use is to be permitted within 150 metres of the odour source. The distance beyond 150 metres over which conditions should be applied to sensitive land uses is determined by Ministry of the Environment staff on a case-by-case basis.

3. For Group C waste stabilization ponds, no sensitive land use may be established within 100 to 400 metres as determined by Ministry of the Environment on the basis of the type of pond and the characteristics of waste.

From an Official Plan perspective the POSITION implies that suitable designations prohibiting sensitive land uses be applied within the recommended separation distances and/or a textual policy be established detailing the separation distance criteria and the nature of sensitive land uses subject to special consideration through planning approval procedures.

Regional Official Policies Plan Review Issues

The R.O.P.P. contains no policy coverage on the subject of land use compatibility surrounding sewage treatment plants. These facilities are all owned and operated by the Ministry of the Environment. In this context odour-related issues have tended to have been referred to Ministry of the Environment and treated as isolated operational problems until their frequency reaches a stage where capital expenditure is required. Concern for the encroachment of sensitive land uses has generally fallen within Area Municipal planning purview.

Given that encroachment by sensitive land uses might ultimately preclude or aggrevate future costs of expansions to sewage treatment plants, the main issue to be addressed in the R.O.P.P. review is whether the Regional municipality should take a more direct role in the matter. Should the assumption of operational responsibility for sewage treatment plants from the Ministry of the Environment ultimately occur, deferral on this land use policy issue would seem to be less tenable.

SECONDARY PLAN POLICY - POLICIES ADOPTED BY COUNCIL RESOLUTION

Background

The practice of developing detailed "secondary" or neighbourhood planning documents to supplement more generalized policies and designations contained in Official Plans originated in the 1950's. The practice spread slowly thereafter to municipalities with large "suburbanizing" fringe areas where the neighbourhood planning concept was employed. Because secondary planning documents deal with very specific local issues such as the location of roads, school facilities, the distribution of development densities, trunk service facilities, convenience commercial uses, etc., they are subject to frequent adjustment as individual development proposals come forward for final approval. The adoption of such secondary planning documents by Council resolution provides a degree of "credibility" while permitting later adjustments that avoid cumbersome and time consuming approval requirements under the Planning Act.

In the early 1970's the Ministry of Municipal Affairs began to encourage the widespread use of such secondary planning documents as a means to speed up the local planning approval process, provide greater flexibility for development and encourage more local decision making. By the late 1970's a large number of urban municipalities were employing the secondary plan system as a means to supplement Official Plans that were still reasonably clear as to the future direction of land use in the municipality.

In 1976 the Town of Richmond Hill began to develop a new Official Plan which placed very heavy reliance upon secondary planning policies adopted by Council resolution. Indeed the draft Richmond Hill Plan of 1978 went further than any other Official Plan by merely recognizing existing development, defining a very general context or capacity for future growth and leaving virtually all remaining policy detail "to development plans" adopted by Council resolution. This proposed Richmond Hill plan attracted a very large number of referrals to the Ontario Municipal Board (over 150) primarily from suburban development interests, directed at the development Plan issue. A lengthy Ontario Municipal Board hearing was conducted in May and June of 1980 that resulted in the outright rejection of the entire Official Plan document.

The Richmond Hill decision also rejected the whole concept of secondary planning by Council resolution as developed to that time. The principles established by the Ontario Municipal Board in the case have subsequently been applied in other hearings where other policies adopted by resolution have been involved, if only in a peripheral way. The Richmond Hill decision also resulted in an abrupt "about face" in the Ministry of Municipal Affairs' POSITION on planning "policies" approved by Councils outside the scope of Planning Act procedures.

Regional Official Policies Plan Review Issues

The R.O.P.P. originated in a period when the use of resolution-endorsed policy systems was very popular and of growing local interest. Consequently, the Plan contains extensive policy coverage on the issue to accommodate and even promote the use of local planning policies adopted outside of formal Planning Act procedures. Over the years the Region itself has taken advantage of this "Implementation Plan" system on a few selected subjects (i.e., Airport Noise, Regional Road Access, Regional Development Charges). The cities of Waterloo and Kitchener have Official Plans and well developed policy systems that rely fundamentally upon the use of resolution-endorsed Implementation Plans. Provision for the use of such Implementation Plans also exists in the Township Official Plans, although it has not yet been exercised to any degree. Only the City of Cambridge has adopted a policy system that does not rely upon the use of Implementation Plans ratified by Council resolution.

Not only is the use of such policy widespread in the Region, its application has been quite successful. Implementation plans are widely supported by both citizen organizations and development interests. These documents have always been treated seriously, public meetings and conflict resolution procedures have been followed that are virtually identical to those of a "formal" Official Plan or Official Plan Amendment. The system has not been challenged before the Ontario Municipal Board and no adverse decisions based on the continued local use of the system have yet emerged from that tribunal.

Revisions to the Regional Plan that would abandon the continued use of the Implementation Plan system would therefore demand fundamental, comprehensive changes to be instituted immediately for most of the established Area Municipal planning programs. Such impacts would be particularly severe in the case of Waterloo and Kitchener. Given the relative success of the system in this Region the major issue to be addressed in the R.O.P.P. Review is what purpose is served in practical terms by a radical change in the Implementation Plan system. Even though the system may prove untenable in the long-term some mechanism to permit a more gradual shift in the Area Municipal policy system is essential to determine.

Overview

The 1980 Richmond Hill decision rejected the concept of Council resolution "policies" as a useful planning tool and attacked the legitimacy of any secondary planning policy adopted by resolution as:

> ".....designed to exclude the rights protected by the Planning Act and the rules of natural justice."*

The decision specifically rejected the use of resolution endorsed policies as the basis for land use decision-making since these were considered to be merely the subjective whims of a particular Council that provided no assurance of continuing application or protection from arbitrary revision. It labelled public hearing procedures on such secondary plans as a "charade" in denying natural justice rights to appeal their requirements. The decision also attacked the lack of public notification guarantees.

In the wake of the Richmond Hill decision the Ministry of Municipal Affairs' POSITION has been to strongly discourage all reference to policies adopted outside the authority of the Planning Act. Where secondary plans adopted by Council resolution are still utilized the Ministry's POSITION is that they must not be used as the basis to introduce any new policy or to provide a basis to refuse any planning application. Municipalities employing resolution-adopted policies are encouraged to:

1. incorporate them into the Official Plan by amendment in their entirety,

2. incorporate at least the land use and density related provisions or other key elements into the Official Plan by amendment.

Some municipalities have pursued a third option of a "disclaimer" in their Official Plan that acknowledges the use of secondary plans adopted by resolution but only as "expressions of Council's intent" for the consideration of those proposing future developments. Subsequent Ontario Municipal Board decisions** have rejected consideration of secondary plans under such a "disclaimer" policy and admonished its use for adding confusion and incomprehensibility to the approved Official Plan.

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* - OMBR 11, pg. 5 (Charron, Singer)

** Re: Jon-Wal Ltd. vs City of Peterborough, OMBR 15, pg. 342(Howden).

PERIPHERAL MALL DEVELOPMENT

Background

In the late 1960's and early 1970's a number of retail mall developments on the rural periphery of urban centres generated extensive controversy. In addition to the planning conflicts inherent to such developments with established urban cores, peripheral malls created bitter antagonism in a large number of areas between urban municipalities and their neighbouring townships (i.e., Barrie).

The peripheral mall controversy came to a head in 1973-4. The Ministry of Treasury, Economics and Intergovernmental Affairs (and later the Ministry of Housing) responded to the situation with a quick amendment to the Planning Act creating a new form of land use control known as the Minister's Zoning Order. Such orders could be imposed unilaterally by tne Minister provided they conformed to any Official Plans in effect.

Concurrent with the amendment to the Planning Act to create such controls the Ministry moved very quickly to impose Minister's Zoning Orders restraining any large scale commercial development in virtually every rural township in the Province which abutted an urban centre and lacked appropriate Official Plan coverage. As these rural townships subsequently developed Official Plans and Zoning By-laws, the Minister's Zoning Orders were removed.

By the late 1970's most of the intensive pressure for widespread peripheral mall development had subsided. However, a number of proposals to create or expand such malls survived. Some of these remaining proposals were recognized to have some support from a planning or market impact perspective. Nevertheless strong lobbying for continuing the prohibitory approach to the development of peripheral malls remained from affected urban centres.

In January 1979 Cabinet endorsed a revision to the Ministry of Municipal Affairs' POSITION on peripheral malls. This POSITION allowed the remaining peripheral mall proposals to proceed and permitted the removal of most of the remaining Minister's Zoning Orders on commercial development.

Overview

The current Ministry POSITION on peripheral malls permits the development of such retail facilities based on appropriate planning, transportation and marketing analyses to justify these through Official Plan Amendment procedures. Where affected urban municipalities appeal such proposals to the Ontario Municipal Board, the Ministry of Municipal Affairs will formally support the urban municipality in their appeal provided the urban municipality has participated in Downtown or Main Street renewal programs, or has made a strong policy commitment in its Official Plan to maintain established retail areas.

From the perspective of Official Plan content the POSITION requires municipalities to place limits on the size and designation of land for larger scale commercial development in peripheral areas if such is to be permitted at all by the Official Plan. The development of malls having sufficient size to potentially impact established commercial or downtown areas thereby requires an Official Plan Amendment, the pre-conditions to which may be specified in terms of planning, transportation and market impact study requirements.

Regional Official Policies Plan Review Issues

R.O.P.P. policies on Settlement and Retail Commercial development clearly orient large scale mall development to urban designations. An explicit categorization of retail mall developments is made and requirements for retail market, transportation and land use impact studies imposed for any community or regional scale mall development. A R.O.P.P. Amendment procedure is also necessary for region mall developments. On this basis it is evident that the R.O.P.P. already addresses this POSITION adequately.

POLICY CONTENT OF OFFICIAL PLANS

Background

The Ministry of Municipal Affairs, as the ultimate approval authority for Official Plans, has long exercised a series of policy POSITIONS which reflect its evolving conception of what is or is not appropriate content for Official Plans. The Ministry has not explicitly required municipalities to adhere to its conception of "good planning" since the demise of the Urban Development in Rural Areas (UDIRA) policy POSITION in 1975. However, it has continued to pursue a variety of POSITIONS that have been developed largely in reaction to proposals determined to be "bad planning." While the distinction may seem subtle, the approach of the last decade has focused more on policy content to be avoided rather than policies to be included.

These POSITIONS have evolved from unique or repeated experiences in the Ministry's review of Official Plan policy proposals that were ill conceived, contradictory or highly offensive to a variety of Provincial interests, potentially costly in their long term implications to the Province or contrary to the Ministry's interpretation of the Planning Act. A number of these POSITIONS remain undocumented outside of the letters and memoranda Ministry staff consider to be precedent setting. Recently some have found their way into the Ministry's information "guidelines", but often in the form of passing references whose significance is not obvious.

Each POSITION outlined below has its own history of development and level of authorization within the Ministry. Much of this background has been obscured with time. In the interests of brevity a discussion on the origins and development of these POSITIONS has been avoided.

Overview

a) Extra-Jurisdictional Policy Content

A brief reference to this POSITION is provided in the informational guideline "Energy Conservation Through Official Plans." It is based upon the Ministry's interpretation of Sections 1(h) and 16 of the Planning Act together with its views on the scope of municipal jurisdiction. The POSITION prohibits Official Plan policies that require agencies, ministries or governments over which Council does not have direct statutory control to take or continue actions deemed "compatible" with other policy objectives of the Official Plan. The Ministry's concern for such extra-jurisdictional policy statements is that they may conflict with or misrepresent the otherwise legal and legitimate policies or activities of non-municipal agencies. The approval of such statements in an Official Plan by the Minister or his delegate is seen to be a tacit endorsement of requirements over such outside agencies that a municipal Council has no jurisdiction to make in the first place.

b) Social and Economic Policy Content

In recent years this POSITION has evolved from the Ministry's interpretation of Section 1(h) of the Planning Act; that Official Plans are to be exclusively land use policy documents. The POSITION existed prior to the adoption of the 1983 Planning Act, however. The POSITION prohibits the inclusion of policies on social or economic development matters that do not have a direct relationship to land use or land use planning activity. Policies directed to "social" issues have tended to attract greater concern from the Ministry than policies on economic development issues. Hence, the specific expression of this POSITION can be difficult to determine. For example, an Official Plan policy in the location and development of family crisis shelters would likely be permissible while a more general policy on the provision of family support and counselling services would not; even though the shelter and the support services it provides may be so inter-dependent so as to be indistinguishable in reality.

c) Community Improvement Policy Content

Because community improvement activities are heavily supported by Provincial funding programs the Ministry's POSITION is oriented to requiring minimum content for Official Plans to qualify for such funding. These minimum requirements are set out in the "Community Improvement - Guideline 4 and require policies to:

a) articulate appropriate goals and objectives for community improvements,

b) define specific criteria of inadequacy as the basis for selecting community improvement project areas,

c) designate community improvement project areas on the basis of such criteria,

d) outline a phasing program for the implementation of improvements,

e) outline specific implementation measures to achieve the improvements required.

d) Site Plan Control Policy Content

Again this POSITION derives from the Ministry's interpretation of Section 40 of the Planning Act. It requires Official Plans to clearly indicate areas or uses that will be subject to the future application of site plan controls. In the case of Sub-sections 40(4) and 40(5) explicit identification of conditions under which detailed site drawings will be required and predefined road allowance dedications obtained through site plan control are required by the Ministry's POSITION. In addition, the POSTION does not generally permit Official Plan policies to apply site plan control to sand and gravel pits licenced under the Pits and Quarries Control Act. or to rural agricultural areas solely for the purpose of road allowance dedications. Appropriate justification on the exercise of site plan controls must support Official Plan policy proposals to indicate "reasonable application" of the control and the administrative capability for proper implementation.

e) Parkland Dedication Based on Residential Density

This POSITION derives from the Ministry's interpretation of Section 41 of the Planning Act. Because such parkland dedication is based on density and may therefore result in the need for greater park dedications than in the standard 5% requirement, it is seen to increase development costs and must therefore be supported by very specific justification and policy in Official Plans. The Official Plan content requirements of this POSITION are outlined in a 1981 publication of the Ministry entitled "Parkland Dedication". It requires a comprehensive analysis and classification of the amount and distribution of parkland relative to residential uses, the development of specific objectives or policies to respond to deficiencies and specific dedication requirements for various municipal sub-areas or categories of residential density to respond to such deficiencies (i.e., a Parks and Recreation Master Plan).

f) Official Plan Policy for Cottage Areas

This POSITION has evolved from earlier prohibitions against the conversion of cottages and other seasonal residential uses into permanent, year-round homes. Its components are outlined in a publication: Official Plan and Zoning Guidelines for Cottage Areas and generally require a detailed land use, servicing, environmental and financial analysis of the cottage conversion issue prior to the endorsement of Official Plan policies to preserve seasonal occupancy, permit widespread permanent occupancy conversions with full services or permit limited conversion under policies that only allow limited services to be extended to such areas.

g) Development on Private Roads

Once again this POSITION replaces earlier prohibitions for new development on roads that are not dedicated and assumed public highways. It also requires a comprehensive planning appraisal of the issue in a municipality as a pre-condition to the approval of Official Plan policies that permit further development on private roads. An outline of the POSITION is provided in the publication: Private Roads: Planning Guidelines for Municipalities.

h) Bonus Zoning

The POSITION of the Ministry on the development of policies for granting density bonuses to new development through zoning by-laws pursuant to Section 36 of the new Planning Act is that the Official Plan must state explicitly what bonus is to be received in return for which kind of facilities, services or matters deemed to warrant the benefit.

Regional Official Policies Plan Review Issues

- Extra-Jurisdictional Policy -

The R.O.P.P. makes extensive reference to the co-operation and involvement of "outside" agencies in the implementation of policies on environmental, economic development, housing, utility, sand and gravel, recreational and transportation matters. Few of these references attempt to direct such agencies to take actions outside of Regional Council's mandate, however. Experience suggests that even these direct references are of little impact in the operational decisions of outside agencies anyway.

It appears that an editorial review and consolidation of R.O.P.P. policies on this matter would be appropriate.

- Social and Economic Policy Content -

The R.O.P.P. contains a variety of policies on social and economic issues that have no direct land use expression. While these may now have a questionable relationship to Section 1 of the Planning Act, the fact remains that Regional Council is being drawn into a more active, policy-oriented involvement on economic and social development issues by many forces, including Provincial agencies such as the Ministry of Health. At present no alternative policy "plan" system exists for these issues. Similarly they have major "quality of life" aspects that have a significant, albeit indirect bearing on physical development.

Accordingly, the R.O.P.P. Review issue in this matter is to reconcile the divergent views of the Ministry and Regional Council, perhaps by some appropriate editorial means.

- Community Improvement Policy Content -

At present the Regional Plan has no direct mandate in community improvement issues, other than one of supportive assistance to Area Municipalities. This POSITION is not relevant to the R.O.P.P. as a result.

- Site Plan Control -

The Regional Plan has no mandate in site plan control policies except in respect to road widening dedications that may occur for upper tier municipalities under Sections 40(8)(9) of the Planning Act. An explicit policy on road allowance dedications in accordance with the Ministry's POSITION has been previously initiated under R.O.P.P. Amendment No. 8.

- Parkland Dedication -

The Regional Plan has no mandate in the area of parkland dedication policy.

- Cottage Area Policies -

The R.O.P.P. contains a very general policy reference to cottage area development in the Settlement Chapter. The evolution of Area Municipal mandates in the last decade indicate that R.O.P.P. policy on the subject is no longer warranted.

- Private Roads -

The R.O.P.P. has no mandate over development on private roads per se. Matters relating to the need for the eventual assumption of such roads fall within the Area Municipal purview.

- Bonus Zoning -

The R.O.P.P. has no mandate on the operation of bonus zoning policy.

FISHERIES POLICY

Background

The Ministry of Natural Resources has long had a mandate for the management of commercial and sports fisheries under the Fish and Game Act and the Lakes and Rivers Improvement Act. Within the limited scope of this legislation the Ministry has taken an interest in the disturbance or alteration of water courses resulting from land development and on changes to water quality induced by such development. In combination with the Ministries of the Environment and Municipal Affairs, the Ministry has undertaken or been party to a variety of studies since the early 1970's on the issue of lake development capacity and its impact on fisheries. In 1979 this interest culminated in program to "designate" fisheries mandate lakes chiefly in Northern Ontario and to pursue a Deputy-Minister endorsed "POSITION" concerning land development proposals adjacent to such lakes.

In recent years the Ministry's mandate on the subject of fisheries has expanded with the delegation of responsibility under the Federal Fisheries Act to protect fish habitat in general. Improved information on fish habitat arising from the Ministry's District Land Use Planning Plan program has provided a more coherent policy POSITION to consider fisheries interests, particularly for Southern Ontario. This POSITION alters the previous "reactive" stance of the Ministry to request that Municipal Official Plans acknowledge fisheries interests and the potential for development adjacent to critical fish habitat areas to adversely affect those interests.

The Ministry has recently initiated a 'Community Fisheries Involvement Program' designed to fund part of the costs of stream improvement and fisheries habitat enhancement by private landowners, sport clubs and other interests. In view of this emerging financial commitment the protection of improvements financed under the Program from the adverse impacts of adjacent land development is seen to be important.

Although the Ministry's new Fisheries POSITION has not been extensively publicized it has been given a high internal status within the Ministry. It is for this reason it is discussed separately in this Report.

Overview

The Ministry of Natural Resources Fisheries POSITION focuses particular interest on all aspects of cold water streams and on spawning areas of warm water streams. Similarly lake trout lakes and lakes supporting commercial operations dependent upon the fisheries resource (i.e., fishing lodges) continue to be emphasized in the Precambrian Shield area.

The POSITION "encourages" Municipal Official Plans to:

1. Acknowledge the benefits of fishery resources for their economic, social and environmental values and support management of the resource accordingly,

2. Identify (by means of a schedule or appendix map) critical habitat areas (i.e., cold water streams, warm water spawning areas, lakes designated a fisheries role by Ministry of Natural Resources) or describe such habitats by textual reference,

3. Ensure that lands adjacent to this critical fisheries habitat areas are placed in "rural", open space, environmental protection or hazard land designations by the Official Plan which are compatible to fisheries management,

4. Establish an explicit development review mechanism (i.e., rezoning requirement) for all potentially incompatible development that enables Ministry of Natural Resources input and Council consideration of their impact on fisheries resources,

5. Facilitate the imposition of modifications or conditions to potentially incompatible development on such matters as:

   - building setbacks from the stream
   - timing of construction
   - the maintenance of riparian tree cover
   - erosion control or sedimentation controls
   - maintenance of access to a public fisheries resource.

Regional Official Policies Plan Review Issues

Most of the cold water fishery resource areas of interest to the Ministry have already been designated as E.S.P.A.'s by the R.O.P.P. The Environmental Impact Study requirements pertaining to these cases more than adequately address the Ministry's interests. Application of the POSITION beyond E.S.P.A.'s falls largely within the purview of Area Municipalities as the planning controls to implement such a policy are their jurisdiction. Given that existing zoning practices in the Townships appear to support the procedures inherent to the POSITION already, policy encouragement from the R.O.P.P. to this effect appears to be the only issue to be addressed.

RESOURCE POLICY CONTENT OF OFFICIAL PLANS

Background

As the agency with the primary mandate for resource issues and direct control over many resources as custodian of most public land, the Ministry of Natural Resources was among the first Ministries to see relationships between its interests and municipal planning policies. Over the years it has developed a series of POSITIONS on various resource matters which affect and are affected by municipal planning programs. However, it has not been until comparatively recently that the Ministry has developed a consistent approach to its resource policy POSITIONS through its revised Plan Input and Review Handbook produced for internal use.

This recent co-ordination appears to be largely a product of the Ministry's District Land Use Planning exercise which culminated in the approval of internal planning strategies for 43 of the Ministry's 47 administrative districts in late 1982. While these District Plans are for the purpose of internal co-ordination, the inter-relationships between various resource uses and municipal planning activities are high-lighted. This has resulted in a major updating of the Ministry's municipal planning review procedures and the POSITIONS on resource issues not otherwise covered by specific POLICIES.

In addition to the POSITION statement on Fisheries Policy content, the Ministry has developed separate POSITIONS on municipal Official Plan policies for:

- Forest Resources
- Mineral Resources*
- Wildlife Resources
- Wild Rice Resources
- Areas of Natural and Scientific Interest
- Provincial Parks
- Hazard Lands

However, unlike the Fisheries POSITION, these POSITIONS carry comparatively less status within the Ministry. For sake of berivity they have been dealt with as a group.

Overview

The POSITIONS on Forests, Minerals, Wildlife, Wild Rice and Areas of Natural and Scientific Interest (ANSI's) are virtually identical in format and their implications for municipal Official Plan content. The matters of specific interest in each case could be described as:

a) Forest Resources

Crown Land Forests, Agreement Forests, Municipal Forests, Woodland Improvement Act Forests, Private Woodlots,

*Note that some mineral resource policy responsibilities have recently been transferred to the Ministry of Northern Development and Mines which may yet articulate different policies in this regard for Northern Ontario.

b) Mineral Resources

Metallic and non-metallic resource deposits and mines (except mineral aggregates such as sand, gravel, clay, limestone, etc.), oil and natural gas wells and deposits,

c) Wildlife Resources

Critical wildlife habitat areas such as wintering and breeding grounds, and significant migratory sites,

d) Wild Rice Resources

Shallow lakeshore marshes suitable for wild rice production under the Wild Rice Harvesting Act.

e) Areas of Natural and Scientific Interest

Environmentally sensitive areas ranked by the Ministry as provincially, regionally or locally significant. (These are the Ministry's equivalent of Environmentally Sensitive Policy Areas).

In each case the Ministry's POSITION on Official Plan content requires:

i) a policy recognizing or acknowledging the importance or value of the resources areas for social, economic or environmental purposes,

ii) an identification or description or designation of resource areas by textual policy, on land use schedule or on a appendix map not legally a part of the Official Plan,

iii) an appropriate land use designation of the resource area that permits compatible rural, agricultural or open space uses plus activities normally associated with the various resources such as:

- Forests - forest planting, tending, harvesting and processing of forest products,
- Minerals - extraction/mining operations, storage and processing operations, exploration and resource development,
- Wildlife - management, viewing, studying and hunting or trapping of wildlife,
- Wild Rice - management, seeding and harvesting of wild rice,
- A.N.S.I. - management, viewing and studying of environmental features.

iv) a policy commitment to consult with the Ministry of Natural Resources prior to the consideration of proposals in resource areas (and in the case of wild rice, adjacent to the resource area) that are likely to be incompatible with the resource. From a practical standpoint this would normally translate into a commitment to pre-circulate development applications for Ministry of Natural Resources input prior to their formal consideration by Council.

v) a policy commitment to consider the impact which incompatible development proposals would have on the resource in determining the acceptability of the proposal.

f) Provincial Parks

Municipalities have no authority over any lands used or designated for future use as provincial parks under Section 3(5) the Provincial Parks Act. Nevertheless, to avoid confusion the Ministry's POSITION on the matter encourages appropriate designation and recognition of provincial parks in municipal Official Plans. The Ministry's POSITION suggests:

i) that provincial parks and candidate provincial parks be specifically designated on an appropriate Official Plan schedule,

ii) that the designation established by (i) above permit all uses normally associated and compatible with park management but acknowledge such are not subject to municipal control,

iii) that a policy commitment be given to considering the potential impact of development adjacent to provincial parks or candidate provincial parks on the use or potential use of such parks in determining the acceptability of such proposals.

iv) that lands adjacent to provincial parks or candidate provincial parks be placed under compatible rural, agricultural, or open space designations or zones that permit the individual review and assessment of potentially incompatible uses.

g) Hazard Lands

This POSITION covers all conditions of natural or environmental hazard to structural development other than riverine floodplains. The latter are addressed by the Flood Plain Criteria POLICY. Hazard lands fall into three general categories:

1. Lakeshore Flood Susceptibility

Low-lying areas around the Great Lakes that are subject to periodic flooding due to high water levels and/or wave uprush during storms.

2. Erosion Susceptibility

Lakeshore or riverside banks and slopes that have been subject to wind and water erosion or subsistance.

3. Unstable or Hazardous Conditons

Areas where structural development may be hazardous due to unstable soils (such as the marine clays of the Ottawa Valley area), unstable geology (Karst topography or abandoned underground mines) and abandoned gas or oil well sites.

The basic Official Plan content requirements appropriate to the Hazard Land POSITION have been standardized for many years. The main features are:

i) that all hazard lands be separately designated on the official plan schedule as a separate designation or development constraint overlay,

ii) that hazard land area policy only permit limited agricultural, conservation, forestry, open space and passive recreational use compatible with the type of hazard,

iii) that permanent structural development incompatible with the nature of the hazard be prohibited and/or subject to approval procedures that permit the imposition of geo-technical engineering study requirements to determine the precise nature of the hazard and acceptable techniques or management practices to establish the new structure so as to overcome or protect against the hazard.

iv) that prohibitions over structural development in hazard lands may not be removed where the techniques required to overcome the hazard would exceed monetary, social or environmental benefits or would aggrevate the nature of the hazard in other areas.

v) that lands designated hazardous are not necessarily acceptable for dedication to public authorities under the Planning Act nor is there a public obligation to acquire such lands if the hazard cannot be overcome or is difficult or costly to overcome.

Regional Official Policies Plan Review Issues

- Forestry -

The R.O.P.P. is among a small group of municipal Plans that clearly supports forestry issues by promoting reforestration and management and discouraging new development within woodlots. The Plan's objectives are now reinforced by the Regional Tree Cutting By-law.

In 1981 an extensive analysis of forestry issues in planning was conducted by this Department. The response to that report indicated very clearly that Regional and Area Municipal Councils are not prepared to pursue the matter in much greater detail than at present. In this context forestry issues applicable in the R.O.P.P. review have been considerably narrowed to somewhat limited, "fine tuning" adjustments.

- Mineral Resources -

Based on present information no mineral resources of application to this POSITION have been identified in the Region.

- Wildlife -

Wildlife resource issues and the question of expanded policy coverage to address the subject present an identical circumstance to that already discussed in regard to the Fisheries POSITION. Most wildlife resource areas are already subject to E.S.P.A. policies. Similarly the outstanding areas fall largely within the Area Municipal mandate where existing zoning procedures can be applied to address the Ministry's POSITION relatively easily at local discretion.

- Wild Rice -

Based on current information, no wild rice resource areas of application to this position have been identified in the Region.

- Areas of Natural and Scientific Interest -

The areas of interest to the Ministry's POSITION on this topic are all currently designated as E.S.P.A.'s and subject to established policies that fully implement the Ministry's objectives.

- Provincial Parks -

No provincial parks exist with the Region and none are currently anticipated in future.

- Hazard Lands -

Only areas of erosion susceptibility have a significant representation within the Region. These areas generally occur along river valleys and are largely covered by Fill Regulations of the Grand River Conservation Authority. As previously indicated such design/siting issues have generally been interpreted to fall within the Area Municipal mandate. R.O.P.P. policy options focus on the promotion of explicit coverage on the subject in Area Municipal Plans.

TRANSPORTATION POLICY CONTENT IN OFFICIAL PLANS

Background

The Ministry of Transportation and Communications has been extensively involved in the review of municipal Official Plans since the inception of the Planning Act. The Ministry's objectives in this regard have changed very little over the years. They continue to reflect a generally reactive approach to municipal policy proposals that seeks acknowledgement to its broad interests in most cases.

The Ministry's POSITION on official plan policy content has never been formally defined.* Some staff level outlines have been developed for general orientation purposes, but these serve more as guides to the review of individual official plan proposals than fixed content requirements.

Overview

The Ministry's POSITION concerning official plan policy in transportation matters covers four areas:*- Provincial Highways, Transit Policies, Strip Development designations and Surplus M.T.C. Lands.

- Provincial Highways -

Since provincial highways are major determinants of municipal land use and local roads policy, the Ministry encourages their "generalized" designation on appropriate official plan schedules or maps.

Generalized designations identifying existing and proposed highways, grade separations, interchanges and related facilities in a symbolic or approximate manner are important to the Ministry particularly for facilities not yet approved under the Environmental Assessment Act. Since the E.A. Act has overriding authority and a rigorous approval system for provincial highways, changes to the design of future highway developments will occur regularly. So as not to interfere with those adjustments, only an "indefinite representation" (i.e., that does not define highway geometrics or the number of traffic lanes) is acceptable to the Ministry. Similarly policies in an official plan that commit provincial highway facilities to specific designs, locations, construction or improvement dates or pre-conditions of development are challenged by the Ministry.

Only proposed provincial highways designated by the Minister of Transportation and Communications under the Public Transportation and Highway Improvement Act are supported for inclusion within official plans. This criterion excludes many highway development proposals and former "low priority" designations made by the Ministry until the mid 1970's that have now been abandoned.

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*Aside from specific POLICY components previously reviewed: Freeway Noise, Mineral Aggregate Resource Planning Policy (wayside pit components).

In Regional, District and Restructured County jurisdictions the Ministry is also obliged to ensure that Official Plan representations of the Upper Tier Road System comply with the Order-in-Council approving same.

- Transit Policies -

The Ministry's extensive subsidies and other support programs for local transit provide a basis for its interest in transit issues at the municipal level. However, because the Ministry's legislative authority on this subject differs from its authority on highway matters, its position is essentially one of encouragement.

For urban municipalities that operate transit systems, the Ministry seeks to ensure that the official plan has at least some policy coverage on the subject of transit. Where Transit Studies have been conducted with Ministry assistance appropriate recommendations from such studies should be reflected in or not directly compromised by official plan policies.

Policies that try to commit provincial transit services (i.e. GO Transit) or provincial highways to undertake changes (i.e. exclusive bus lanes, system expansions, station developments) will be discouraged, particularly if they do not reflect approved Ministry commitments.

- Strip Development -

The Ministry's concern for strip development proposals in official plans is directly related to its access control for Provincial highways POLICY interests.* Its POSITION on strip developments adjacent to Provincial highways is that local policies not create new strip development areas or permit the expansion or major alteration of existing strips (i.e. conversion of residential strips to commercial use). Local plans that seek to reinforce or expand strip development adjacent to Provincial highways are accepted only where specific policies and site-related studies are established to ensure the construction of service roads and consolidated access points at the expense of landowners or the municipality.

- Surplus M.T.C. Lands -

In the course of acquiring land for highway improvement purposes, the Ministry is frequently obliged to acquire entire parcels, some of which are surplus to the needs of a particular facility. The Ministry evaluates municipal land use policies for such surplus lands to ensure consistency of treatment to adjacent private land holdings. The Ministry's POSITION in this matter calls for objections to be registered where "open space" and similar designations or restrictive policies are applied that would drastically reduce the value of surplus lands.

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*The Access Control for Provincial Highways POLICY is not reviewed by this report as it has been developed and is exclusively oriented toward land severance or consent issues. It gains expression in Official Plan matters only through the Ministry's Transportation Policy Content POSITION statement and contains no requirements of direct relevance to Official Plans.

Regional Official Policies Plan Review Issues

- Provincial Highways -

The R.O.P.P. establishes only generalized designations of provincial highways and regional roads. Road improvement issues specific to various components of the Trunk and Primary Road system designated by Maps 5 and 6 of the R.O.P.P. are addressed by the Transportation Plan Update "implementation plan" that is developed and ratified separately from the R.O.P.P. The R.O.P.P. already addresses the Ministry's POSITION in this regard.

- Transit Policies -

The R.O.P.P. contains few explicit policies on transit as this continues to be an area of Area Municipal mandate notwithstanding legislative authority for a future Regional assumption of responsibility. Specific treatment of the Ministry's POSITION on this matter is therefore not required.

- Strip Development -

Beyond general policy references discouraging strip development, the R.O.P.P. does not deal with land use issues in the level of detail where application of the Ministry's policy POSITION would be required. The mandate to develop specific policy on the matter in respect to Provincial highways rests with Area Municipalities.

- Surplus M.T.C. Lands -

As indicated above the R.O.P.P. does not address site specific land use issues with the detail that this POSITION would be relevant. The mandate to develop specific policies on the matter rests with Area Municipalities.

CHAPTER 4

CONCLUSIONS

General

1. Provincial "policies" associated with municipal planning have generally sought to enlist the support or the active involvement of municipalities in the implementation of Provincial mandates or interests. As trends in fiscal restraint adversely affect direct Ministry expenditures and services in areas related to municipal planning activities, the "policy" demands made upon those activities will continue to evolve.

2. The "policies" advocated by Provincial Ministries in local planning are not necessarily in conflict with municipal interests. They ultimately reflect the similar "good planning" objectives and may be compatible to municipal planning procedures in many ways. It is simplistic to assume all policies advocated by the Province for inclusion in municipal plans are in competition with municipal interests.

3. It is also simplistic to consider all Provincial "policy" interests to be mandatory for municipal application. Some elements, such as policy statements, are or will be "mandatory " depending upon one's interpretation of the crucial phrase "have regard to" in the new Act. Others are "required" only to the extent that municipal conditions deem necessary. Still others are ultimately discretionary for municipal application. The fundamental problem facing municipalities is that such distinctions have never been predefined and can only be determined through debate and negotiation with the relevant Ministries.

4. Provincial "policies" have been applied in municipal planning activities for many years. While the new Planning Act formally recognizes this involvement, it does not fundamentally change the nature of Provincial "policy" objectives.

Policy Statements

5. Only a small number of "policies" now applied by the Province in local planning affairs will achieve Policy Statement status under Section 3 of the new Planning Act. Despite an original objective to establish a more "disciplined" system to policy affecting municipal plans, a consistent system for the development, review, approval and implementation of Provincial "policies" has only been achieved for "policy statement" issues. Most "policy" requirements applied by various Ministries will continue to exist outside the formal procedure for "policy" under the new legislation.

6. The policy statement procedures of the Planning Act ensure considerable notification and involvement for municipalities in the development of this class of Provincial policy. As evidenced by the apparent "unilateral" changes that have been made by the Minister of Natural Resources to the Floodplain Criteria and Wetland Guideline policies, it is apparent that the process for revising policy statements requires definition to ensure municipal input, perhaps through the future "guideline" on policy statements to be issued by Ministry of Municipal Affairs. Similarly no process appears to exist to formally "de-certify", abandon or otherwise clarify the status of past policy initiatives, such as the Toronto-Centred Region Plan, that have been rendered defunct with time and circumstance.

7. Policy statements place a statutory onus upon municipalities to prove their planning decisions "have regard to" the applicable requirements of the policy statement. Documented justification for decisions showing the extent to which policy statement issues apply, how they have been adhered to and deviated from, will become a more significant part of the approvals process than in the past.

8. Municipal Councils have a major role, but do not have "ultimate" authority to judge what is an "acceptable" justification in policy statement matters. This authority rests with the Minister of Municipal Affairs and the Ministry sponsoring a particular policy statement. Any attempt to ignore or deal frivolously with policy statement matters will likely be challenged by Provincial Ministries to the Ontario Municipal Board.

9. The debate over the effective meaning of the phrase "have regard to" in the new Planning Act remains unresolved. If the "liberal" interpretation of the Ministry of Municipal Affairs prevails, policy statements may demand little change in approach for many municipalities. If the strict interpretation taken by some other Ministries prevails then a considerable change in municipal planning approaches may well be required; particularly in the process of justifying decisions effecting policy statement issues.

10. Although the Ontario Municipal Board has yet to establish a clear position on the interpretation of policy statements, one can anticipate that the Board is also likely to maintain a strict interpretation in the early years at least.

11. Because "justification" is at the centre of the debate concerning the requirement to "have regard to" under the Planning Act, the process of justifying municipal planning decisions will become as important in future for Provincial policy purposes as for purposes of local political accountability. Information systems and related techniques to support ongoing justification analyses will become essential.

12. Because "justification" will become crucial to the operation of municipal plans on policy statement matters, the "standards of justification" or the "matters to be addressed" in justifications are central to the subsequent review, approval or defense of municipal decisions. Some of the draft policy statements now in existence are seriously flawed by a failure to outline these standards as a formal component of provincial policy. In the absence of consistent, "ground rules" for justifications, continuing disagreement between Ministries and municipalities as to what is or is not an "acceptable" justification is likely to emerge.

Other Policies

13. The Ministry of Municipal Affairs has given a narrow interpretation to the scope of the "policy statement" procedure for a number of reasons. However, that interpretation does not impinge upon the authority of Ministries to continue to pursue "other policies" on a wide variety of subjects. From the municipal perspective the issues concerning these "other policies" remain unchanged. They will continue to be promoted and applied by various Ministries and can no more be ignored or discounted than in the past.

14. The "policy statement" and "provincial interest" components of the new Act are setting into motion new or renewed efforts on the part of several Ministries to "clean up their act" in policy matters affecting municipal planning. The primary objective is to establish and formalize their interpretation of "provincial interest". This will enable them to exploit or defend against the exclusive authority of the Minister of Municipal Affairs to declare or interpret "provincial interest" under the Planning Act and thereby set into motion a series of very significant powers over all participants in the process.

15. Emerging efforts to "clean up" internal Ministry policies have prompted some Ministries to document their "policy" positions in a coherent form, establish internal procedures for the development, ratification and interpretation of such policies and attempt to publicize the existance or distribute such policies to municipalities. Whatever the motivation, this is a very positive trend from a municipal perspective. It promises to reduce the frustration and conflict generated from previous attempts by some Ministries to apply undocumented, ill-conceived and "unauthorized" policy requirements on municipal plans.

16. Nevertheless, municipalities will continue to experience a number of significant frustrations with these "other policies". No mechanism exists to permit or ensure any municipal input whatsoever in the development, ratification or revision of these "other" policies. No minimum requirements exist as to the content, level of authorization or format of these "other" policies even to the extent of ensuring they are written down in some coherent fashion. In the absence of a consistent system of inter-Ministerial co-ordination for these "other" policies, municipalities are ill-equipped to arbitrate competitive interests of senior agencies. In this context the attitude of the Ministry of Municipal Affairs and other delegated approval authorities to "run interference" for both municipalities and Provincial Ministries pursuing "other policies" is crucial.

17. While this condition is by no means new to municipalities, it may become increasingly untenable as Ministry "policies" become more numerous, formal and consistent. In the long-term there is a need to either expand the scope of the policy statement procedure from its current narrow focus or establish a parallel, but less formal system for inter-Ministerial co-ordination and municipal involvement in "other policies" being applied in municipal planning.

Municipal Policy Considerations

18. The accommodation of Provincial "policy" interests can add to the complexity of municipal official plans and implementory decision-making. The extent to which this is a problem depends on the "style" of the municipality's planning documents and procedures. The greatest source of uncertainty and conflict in the accommodation of Provincial interests in future will focus on the need for "major" changes to established municipal planning practices. While considerable effort goes into the development of implementory "guidelines" for policy statements to accommodate the diversity of planning "styles", the same effort is not presently made for "other policies."

19. A variety of Provincial "policy" interests inevitably overlap or compete with one another in their application through municipal planning procedures. The extent or severity of this overlap or competition is determined by the social, economic and physical characteristics of the planning area. The Provincial government is unwilling to establish formal, predetermined "priorities" between its policy interests. It is the role of the municipal planning system to mediate these interests when required.

20. Municipal official plans have long fulfilled this role. Official Plan policies represent a "compromise" between Ministry interests and municipal interests. The New Planning Act provisions requiring "review" of official plans at least once every five years may erode the "security" of past policy compromises for both Ministries and municipalities. Municipalities will have to consider and deal with the evolving Provincial "policy" interests in their planning affairs more frequently than in the past.

21. As the new Planning Act has set into motion a trend toward formalizing Ministry policy requirements upon Official Plans, the necessity for municipalities to maintain close contact and direct communication with Ministry staff has increased.

22. The competition of evolving provincial interests for attention in municipal Official Plans may affect the structure of such documents. Because of the heavy onus imposed by justification requirements, it would seem that Official Plans using the single purpose or specific land use designation approach will become more difficult to sustain. Policy systems such as the R.O.P.P., that effectively "defer" the allocation of policy interests to the case by case implementation stage are likely to be favoured by several Ministries or considered more acceptable where overlapping interests are particularly strong.

23. The consultation and involvement of Ministries that is associated with this case-by-case mediation may ultimately slow down and confuse local planning decision-making if the associated Ministries cannot maintain a high level of field service support to municipalities in the face of an increasing application of this policy approach.

24. In some cases the nature of Ministry "policy" interests in local planning is highly technical, requiring special expertise to assess the nature and significance of various factors, and make the competent professional judgements necessary to properly advise Council. Where Councils are totally reliant upon this "outside" expertise, concerns for an apparent loss of control in municipal decision-making will continue despite the delegation of authority implied by some Provincial "policies". Where no coherent municipal interest is being served it may be more appropriate to avoid municipal involvement in Ministry "policies" if this is possible.

Regional Official Policies Plan Policy Considerations

25. The development of a more formal system for the declaration of provincial interests under the new Planning Act places an unusual obligation on the Regional Official Policies Plan to address declared provincial interest issues. In exercising its extensive delegated powers from the Minister of Municipal Affairs, Regional Council must also maintain allegiance to the content of the Regional Official Policies Plan. Where the declared provincial interest and the policies of the R.O.P.P. are clearly and directly in conflict, Regional Council would not be able to exercise to delegated authority without the "risk" of the Ministry "calling in" its delegated powers or forcing an amendment to the R.O.P.P. To avoid this unusual and highly unsatisfactory situation there is a special onus on the R.O.P.P. and Regional Council to keep up to date on emerging provincial policy interests.

26. The 1976 R.O.P.P. addresses many provincial "policies" and generally supports their objectives. The extent of this conformity is significant when one considers that the R.O.P.P. predates most of these provincial policy initiatives.

27. The impending ratification of policy statements pursuant to Section 3 of the Planning Act demands that R.O.P.P. policies on these subjects be brought up to date. Major new policies are only needed for floodplains and road noise issues. Relatively minor alteration or clarification to established R.O.P.P. policies on other policy statement subjects should be sufficient.

28. There is no legal obligation for either the R.O.P.P. or Area Municipal Official Plans to address provincial "policies" on subjects that are not likely candidates for policy statement status. Nevertheless, it will continue to be essential to treat these "other" policies seriously and to address those with great relevance to local planning practice.

29. The basic structure of the R.O.P.P. as a "policy constraint" style of official plan appears compatible to diverse provincial "policy" interests. This style of document is capable of accommodating emerging "policy" requirements without the need for major alteration or revision.

30. As a "policy constraint" style of Official Plan, the R.O.P.P. effectively defers the arbitration of many competing interests and policies to case by case resolution in the Area Municipal Official Plans or zoning by-laws. The land use "priorities" and justification "requirements" that accomplish this arbitration are currently vague and incomplete. To permit a clear, consistent means for reconciling competing provincial "policy" interests in future it is essential that R.O.P.P. land use priorities and justification requirements be stated more clearly; particularly in the absence of a comparable initiative at the provincial level.

31. The R.O.P.P. is a broad co-ordinating policy document that is <u>not</u> the appropriate vehicle to address all elements of all provincial "policies". Many elements of these "policies" are better dealt with at the Area Municipal level where effective jurisdiction remains in such matters as zoning administration, site plan control, specific land use allocations, etc.

32. With Area Municipal co-operation the R.O.P.P. could be more effectively used as a co-ordinating tool for "detailed" policy issues of local significance that address provincial "policy" requirements. R.O.P.P. coverage to define a consistent scope for local Official Plan policies on such matters may introduce greater stability than individual efforts which are subject to review and potential re-negotiation every five years.